88-846 (1)

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

NO:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

GERALD M. SPARKS,
PLAINTIFF-APPELLANT

versus

CHARACTER & FITNESS COMMITTEE
DEFENDANTS-APPELLEES

SPECIFY:

TOMMY BELL - CHAIRMAN OF THE CFC
JUNIUS BEAVER, JR.
GRANT HELMAN
WILLIAM BAIRD, III
STUART E. LAMPE
PAT GILL, SECRETARY TO THE BOARD

INDIVIDUALLY & COLLECTIVELY

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

PETITION FOR CERTIORARI

GERALD M. SPARKS
113 WEST SOUTHERN HEIGHTS
LOUISVILLE, KY 40214
PHONE: (502) 368-1435
(502) 582-1347

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QUESTIONS PRESENTED

I. Did the U.S. Court of Appeals, 6th Circuit, fail to apply Supreme Court Case Law to this case thereby violating Appellant's 5th, 6th, 8th and 14th amendment rights when:

1. Appellant was never afforded notice of a hearing, nor was he ever given a due process hearing following his interview and subsequent rejection by the Character and Fitness Committee (CFC).

2. The Appellant was permitted to study, prepare and pay his fee to take the bar examination on four separate occasions, unaware of a "blackball" letter in his folder dating back to the 5-minute CFC interview of 1/28/80.

3. Appellant should have been informed of and given a copy of the letter issued by the CFC prohibiting him from ever being admitted to the Kentucky Bar.

4. No procedural or substantive due process was provided to Appellant.

5. The CFC interview should not provide one man with the legal right, after a 5-minute interview, to blackball an applicant without providing him with due process.

II. How can the Immunity Defense apply to the CFC? Isn't it an administrative rather than a judicial function, and why was a new Kentucky Supreme Court rule written regarding immunity after suit was filed by Appellant?

III. Is the One-Man CFC Above the Law?

IV-Whydidn't the three Judge panel at the 6th Circuit follow FORRESTER V WHITE 484 US _____ (1988) as instructed & mandated to do by the US Supreme Court? This case was before the US SUPREME COURT, during the OCTOBER 1987 term. Petitioner received 8-0 vote in his favor from this court. The Character & Fitness Committee, has no immunity for blackballing prospective bar applicants before they take any exam, when they place a letter in applicants file not to pass this man.

V-This case should be considered to be a landmark case. Does a mere lawyer have immunity from civil liability when it can be proven he black-balled a prospective bar applicant by placing a letter in his file, before the applicant took any bar exam?

VI-Why does the three Judge panel keep insisting that the chief Justice of Kentucky Supreme Court, was sued, when in fact he was not named in the complaint?

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3.160(4) (New rule Appellees wrote after
Appellant filed suit)

Exhibits:

1. CFC letter regarding Appellant
2. Courier Journal article on sponsors /mentors
3. Kentucky Supreme Court Rules
   2.060
   3.160(4)
4. Courier Journal article on FBI

NO.

IN THE

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OCTOBER TERM, 1988

GERALD M. SPARKS,
PLAINTIFF, APPELLANT

versus

CHARACTER AND FITNESS COMMITTEE
DEFENDANT, APPELLEE

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT

PETITION FOR CERTIORARI

MAY IT PLEASE THE COURT:

The petition of the Appellant respectfully pleads that a Writ of Certiorari be issued to review the judgment and opinion of the Federal Court at the 6th Circuit entered in these proceedings on October 18, 1988.

OPINION BELOW

The opinion of the 6th Circuit is cited as Sparks v. Character & Fitness Committee, _____ Southwestern 2d _____ (Ky. 1987).

108 S. Ct. 538 (1988)

JURISDICTION

The judgment of the 6th Circuit, Federal Court, was entered on 10-18-88. This Petition for Certiorari to the Supreme Court, State of Kentucky, is filed herein within (90) days of the judgment below. This Court's jurisdiction is invoked under 28 U.S.C. 1257(3) and United States v. Mendenhall, 446 U.S. 544, 64 L.Ed.2d 497, 100 S.Ct. 1870 (1980).

CONSTITUTIONAL PROVISIONS INVOLVED

The 5th, 6th, 8th and 14th amendments. Namely, the right of a bar applicant to be entitled to A) Notice of a Due Process Hearing, and B) To have a Due Process Hearing.

It is certainly cruel and unusual punishment under the 8th amendment to allow a man to study and prepare for the Kentucky Bar Exam four times, take his money for the exam, and

know from day one he would never be passed on the exam.

The 6th amendment right of confrontation was never offered to the Appellant.

STATEMENT OF THE CASE

Appellant filed suit in Federal Court in Louisville, Kentucky. Plaintiff's Motion for Summary Judgment was granted; Appellant appealed to the 6th Circuit; during oral argument the three-judge panel told the Appellees, "You boys have no defense! Are you better than U.S. Congressmen? They have no immunity from civil liability; Are you better than the AMA (American Medical Association)?" The Federal Court told them the AMA has no immunity from civil liability. The Court said, "if you have a secretary, would she have immunity from civil liability?" The Court said the answer is "no". The only question the Federal Court asked the Appellant is "did you have notice of a hearing, and did you have a due process hearing." The answer was, "no, I

did not." The Federal Court stated one thing in open court and went behind closed doors one year later and gave the Character and Fitness Committee (CFC) immunity from civil liability. Now the Appellant appears before this respected Court and asked this Court to:

A) Waive him into the Kentucky Bar

B) Award him $650,000 in damages

STATEMENT OF FACT

This is a case of first impression before this respected Court. When this Court applies the law to the facts, this case should represent a landmark decision in this country.

For a brief summation of the facts. From day one, 1-28-80, the day of the Appellant's CFC interview, the Appellant was blackballed by the CFC interviewer, Junius Beaver, Jr., after a five-minute interview. Beaver arbitrarily and capriciously sent a letter to the Kentucky Board of Bar Examiners blackballing Appellant based on information that was supplied to Beaver by the Appellant. The letter was then

placed in applicant's folder preventing him from ever being passed on the Kentucky Bar Exam. Interviewing prospective bar members in the past has been a mere formality and, at best, represents an administrative function.

The Appellant never received any notice of a hearing, nor was any due process hearing afforded to the Appellant. The Kentucky Board of Bar Examiners took Appellant's money four times for the bar exam, knowing that because of a letter placed in his file, they never intended to pass him. This Appellant was in fact blackballed by his CFC interviewer and was never given a fair and equal opportunity of being passed.

The CFC willfully, wantonly, maliciously and intentionally violated the Appellant's basic and fundamental Constitutional rights. Appellant was never provided with a copy of the above letter and it was never intended for the Appellant to find the letter in his folder.

The Kentucky Supreme Court rule in exis-

tence when the Appellant sued the Appellees was Rule 2.060 entitled, Committee's Decision as to Eligibility. That rule says the decision of the Character & Fitness Committee as to the eligibility of an applicant for admission to the Bar of this state shall be final unless, on motion of the applicant filed within 60 days after notice of an adverse decision has been mailed to his last known address, the Supreme Court, upon review of the record, overrules such decision.

Beaver, Jr. was the Appellant's Character & Fitness Committee. He never gave the Appellant ANY NOTICE OF A HEARING, NOR DID HE PROVIDE HIM WITH A DUE PROCESS HEARING. He intentionally caused a letter to be placed in Appellant's folder preventing him from ever being passed on the Kentucky Bar Exam. Not only did the Appellant find the letter in his folder that said, "Do not pass," when you read it in conjunction with the Kentucky Supreme Court rule in existence at the time the

letter was written, he also saw "Do not pass" written on the outside of his folder.

After the Appellant sued the appellees, a new Kentucky Supreme Court rule (3.160(40) was written in an attempt to obtain immunity from civil liability. Writing a new rule is an admission by a party opponent that they didn't believe they had immunity in the first place! The new Kentucky Supreme Court rule 3.160(4) which reads as follows:

"Neither the Kentucky Bar Association nor its officers, agents, delegates or members shall be liable to any member of the bar nor to any other person charged or investigated by said association, its officers, agents or delegates, for any damages incident to such investigation or any complaint, charge, prosecution, proceeding or trial." The new rule appears to be unconstitutional because it provides for no due process.

If the Appellant was the first man they ever blackballed, why would they go to all the

time, trouble and expense of writing a new Kentucky Supreme Court rule?

Please consider these additional facts. Tommy Bell, the Chairman of the Character & Fitness Committee, told the Appellant after the Appellant found the letter in his file some three years after the letter was written, "we always intended to take your money for the Bar Exam, but we never intended to pass you!" Why would Mr. Bell make such a statement. He was arrogant and he thought he was untouchable! He gave the University of Kentucky $100,000 for 12 years as a gift. He thought I was a "little man" trying to be admitted to the Bar.

Consider these additional facts. Bar examiner, Stuart Lampe, told the Appellant, after the Appellant requested to see his exam paper "what is your exam number", the Appellant told him, then the bar examiner voluntarily said, "You passed my section," and indicated he had the Appellant's paper in one stack with all the other passing papers, and his non-passing

papers in a different location. When the Appellant asked why he only received 73 when 75 was passing since he had passed Lampe's section there was absolute dead silence; the bar examiner knew the Appellant's name, but he did not know his face when he came into the Bar Examiner's office unannounced. It was an old bar exam question the Appellant had in bar review course and he knew the answer like he knew the back of his hand.

Please consider this additional fact. There was an article that appeared in the Louisville Courier Journal in 1984 whereby the people that administer the Kentucky Bar Exam actually came out and admitted that if you have a sponsor or mentor when you take the Kentucky Bar Exam, you have a much greater chance of being passed; they also said you must pass the CFC before you can be admitted to the bar. This admission is discriminatory on its face! This would enable the CFC to maintain a private club if they wanted. Like any agency, the CFC

should be submitted to some kind of checks and balances system.

Over 30 states have now abolished Character & Fitness Committees because they serve no useful purpose. Presently, it does allow the one man during a five-minute interview to look at an applicant, and if he doesn't fit the physical image he wants a letter is placed in an applicant's folder preventing him from ever being passed. The five-minute interview was the first time Beaver had ever met the Appellant! Not only is it wrong, it is inherently wrong to place a letter in Appellant's folder and not provide him with any due process. In this country every man is supposed to have a fair and equal opportunity of passing a professional exam.

The Appellant has no criminal record; but he can show you 12 convicted felons practicing law in Kentucky, four of them are in Louisville.

LAW AND ARGUMENT

Supreme Court Case Law, the Willner v. Character & Fitness Case at 373 U.S. 96 (1963) and the Louis v. Supreme Court of Nevada 490 F. Supp. 1174, are crystal clear; they hold that a prospective bar applicant must have A) notice of a hearing, B) a due process hearing so he can be confronted and explain away anything that the CFC thinks they have against the man. NO NOTICE, NO DUE PROCESS HEARING WAS EVER GRANTED IN THE APPELLANT'S CASE. Beaver arbitrarily and capriciously placed a letter on the Appellant's folder preventing him FROM EVER being passed on the Kentucky Bar Exam.

When an applicant's money is taken for a professional exam, he must be given a fair and equal opportunity of being passed! To allow the CFC immunity from civil liability would put them above the law and prevent them from being subject to any type of checks and balance system. Certainly they have no immunity when they violate a bar applicant's basic and

fundamental civil rights! To grant civil immunity to a man who merely exercises an administrative function by interviewing prospective bar members would circumvent the law and allow the CFC to practice discrimination legally. Even Chief Justice Robert Stephens of the Kentucky Supreme Court believes the CFC should not have immunity. See City of London vs. Gas Services Co., 687 S.W. 2 144. If anyone violates civil rights, they should be made to pay for violating those rights.

No man is this country is supposed to be above the law. The one man CFC has no power to hear cases, render written opinions, conduct trials, set bail, set bond, or impose sentencing. He only interviews prospective bar members and, therefore, he has no judicial immunity. Interviewing prospective bar members is purely an administrative function.

A professional exam is supposed to be based upon merit and not on who you know or

whether or not a letter has been placed in your file.

What gives one man the right, power and authority to place a letter in a man's folder without his basic and fundamental due process rights being granted? Beaver, Jr. clearly abused his discretion when he placed a letter in applicant's folder, blackballing the Appellant. This case should set a very big precedent in this country!

The Appellant asks that this not become a political decision as he has worked very hard for his education. A man's mind is a horrible commodity to waste! This case does in fact show that corruption exists within the administration of the Kentucky Bar Exam. Beaver has denied Appellant access to his chosen profession. How many other people have been treated in this manner and in how many other professions does this extreme and outrageous conduct exists?

Please allow this case to set a precedent

for those people that administer professional exams. They should be fair to all people, or be prepared to pay a price for violating an individual's basic and fundamental constitutional rights!

SEE FORRESTER V WHITE 484 US_____, where a Judge has no immunity from civil liability when he fires a black female probation officer and she sues the Judge based upon sex discrimination and the Judge claims he is immune from civil liability. The Court held that the JUDGE HAS NO IMMUNITY from civil liability.If a Judge who is excerising purely an administrative function has no immunity from civil liability how can a mere lawyer have immunity from civil liability?

Beaver Jr., the man that placed the letter in Sparks's folder or file, before he took any exam, how can this man have immunity from civil liability when he is excerising purely an administrative function when he interviews prospective Bar Applicants?If a Judge doesn't have immunity from civil liability when he excerises purely an administrative function, how can a mere lawyer have immunity from civil liability?

CONCLUSION

For the reasons set out herein, this Honorable Court should and ought to issue its Writ of Certiorari to review the judgment and opinion of the 6th Circuit concerned herein.

Respectfully Submitted,

GERALD M. SPARKS
113 West Southern Heights
Louisville, Kentucky 40214
(502) 368-1435
(502) 582-1347

VERIFICATION

I, Gerald M. Sparks, hoping to be a member of the Bar of Kentucky and the person of record for Appellant in the above entitled matter.

I have read the foregoing petition and know the contents thereof.

I declare under penalty of perjury under the laws of Kentucky that the foregoing is true and correct. Executed on Nov. 1, 1988 at Louisville, Kentucky.

Gerald M. Sparks

GERALD M. SPARKS

APPENDIX

Appendix "A"
6th Circuit Opinion
Sparks v. Character & Fitness Committee
Judgement of Federal 6th Circuit
Entered on 6-16-87

Appendix "B"
Petition for Rehearing - Denied

I certify that all the appendices attached to the petition for Certiorari filed herein are true copies of what they purport to be.

Gerald M. Sparks

GERALD M. SPARKS

STATEMENT OF MAILING

I, GERALD M. SPARKS, hereby certify that, on the first day of Nov., 1988 , I served 3 copies of the foregoing petition by personally placing same in a sealed envelope first class postage thereon fulled prepaid in United States Post Office Mail box in Louisville, Kentucky, to each of the parties thereto, as follows:

1. To the United States Supreme Court, office of the Clerk, Washington, D.C. 20543, enclosing established filing fee; and

2. On appellees, through their counsel of record, John Valentine, 1200 One Riverfront Plaza, Louisville, Kentucky 40202 (3 copies given).

IT IS FURTHER certified that all parties required to be served have been served, and that the list of such parties is as set forth above.

Gerald M. Sparks

GERALD M. SPARKS

COUNTY OF JEFFERSON

STATE OF KENTUCKY

On Nov. 1, 1988 , before me the under signed, a Notary Public in and for said state, personally appeared Gerald M. Sparks, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

Patsy C. Gatchell

Notary Public for said County and State

APPENDIX

A. SPARKS V CHARACTER & FITNESS COMMITTEE
6 TH CIRCUIT OPINION
JUDGMENT OF FEDERAL 6th CIRCUIT

B. PETITION FOR REHEARING-DENIED

C Writ of CERTIORARI GRANTED.
6th CIRCUIT TO FOLLOW FORRESTER V
WHITE 484 US___.Petitioner received
($200.00 for his costs expended.

D. SPARKS V CHARACTER & FITNESS COMMITTEE
6th CIRCUIT OPINION
JUDGEMENT OF FEDERAL 6th CIRCUIT

APPENDIX A

RECOMMENDED FOR FULL TEXT PUBLICATION
See, Sixth Circuit Rule 24

No. 85-5629

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

GERALD M. SPARKS,
Plaintiff-Appellant,

v.

THE CHARACTER AND FITNESS COMMITTEE OF KENTUCKY; JUNIUS BEAVER, JR.; TOMMY BELL; GRANT HELMAN; BILL BAIRD III; JUDGE STUART LAMPE; ROSEMARY PUCKETT; PAT GILL,
Defendants-Appellees.

ON APPEAL from the United States District Court for the Western District of Kentucky.

Decided and Filed May 11, 1987

Before: ENGEL, KRUPANSKY and RYAN, Circuit Judges.

RYAN, Circuit Judge. Gerald Sparks appeals *pro se* the district court's dismissal of his complaint against the Kentucky Committee on Character and Fitness, its members, two employees hired by the Committee, one member of the Board of Bar Examiners, and the Chief Justice of the Kentucky Supreme Court. The district court held that the defendants were entitled to absolute judicial, or quasi-judicial, immunity

from liability in appellant's 42 U.S.C. § 1983 suit requesting monetary damages. We affirm.

I

On March 1, 1985, Sparks filed a complaint in district court alleging § 1983 violations of his procedural and substantive due process rights, his equal protection rights, and his rights under the eighth amendment of the United States Constitution. He also alleged breach of contract, fraud and deceit.

Specifically, Sparks averred that in 1980, when he was first a candidate for admission to the Kentucky Bar, he was interviewed, pursuant to Kentucky Supreme Court Rule 2.040, by Junius J. Beaver, Jr., an associate member of the Committee. At the conclusion of the interview, Mr. Beaver addressed a letter to the Kentucky State Board of Bar Examiners stating that because Sparks was not possessed of the requisite character and moral fitness, he could not recommend that Sparks take the upcoming Kentucky Bar Examination.

Sparks contends that despite Mr. Beaver's adverse recommendation, of which Sparks had no knowledge, "the powers that be still allowed him to take the Kentucky Bar exam four times ... knowing full well that the plaintiff had been blackballed." Sparks failed the bar examination three times; his fourth examination was never graded.

On April 17, 1985, the district court dismissed the action against defendant Robert F. Stephens, Chief Justice of the Kentucky Supreme Court, holding that the Chief Justice was entitled to absolute immunity because consideration of an application for admission to the bar is a judicial act for which a judge cannot be held liable in damages. On June 25, 1985, the court dismissed the action against the remaining defendants, finding:

> "The Kentucky Supreme Court has extensive authority over the Board of Bar Examiners and the Character and Fitness Committee. Their members

> are appointed by the Supreme Court and the Court must approve the rules and regulations promulgated by those members. *Supreme Court Rules* 2.000 & 2.040. In addition, the court directs which subjects are to be tested and the minimum score needed to pass the examination. *Supreme Court Rule* 2.090. Finally, the court retains the final authority to determine who will be admitted to practice law in the State. *Supreme Court Rule* 2.060."

The court concluded that the functions of the Board of Bar Examiners and the Committee relating to Sparks' application for admission to the bar "cannot be divorced from the actions of the Supreme Court of Kentucky" and these activities are also "clothed with judicial immunity." The court ordered Sparks' complaint dismissed.

II

It is well-established that judges of courts of general jurisdiction are immune from liability for their judicial acts. *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335 (1871). Except for acts in the "clear absence" of jurisdiction, judicial immunity is absolute. *Stump v. Sparkman*, 435 U.S. 349 (1978); *King v. Love*, 766 F.2d 962 (6th Cir.), *cert. denied*, _ U.S. _, 106 S. Ct. 351, 88 L. Ed. 2d 320 (1985).

While the defense of judicial immunity is very broad, it does not protect a judge in the performance of non-judicial acts. *Lynch v. Johnson*, 420 F.2d 818, 820 (6th Cir. 1970). In *Sparkman*, the Supreme Court stated:

> "The relevant cases demonstrate that the factors determining whether an act by a judge is a 'judicial' one relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity."

435 U.S. at 362. In the present case, the district court determined that the act of evaluating an application for admission to the state bar is judicial in nature.

The power to determine who should practice before the courts has been aptly summarized by Chief Justice Taney:

> "And it has been well settled, by the rules and practice of common-law courts, that it rests exclusively with the court to determine who is qualified to become one of its officers, as an attorney and counsellor, and for what cause he ought to be removed."

Ex parte Secombe, 60 U.S. (19 How.) 9, 13 (1856). This power is not only exclusive; it is inherently judicial. *Simons v. Bellinger*, 643 F.2d 774, 780 (D.C. Cir. 1980). *Accord Louis v. Supreme Court of Nevada*, 490 F. Supp. 1174, 1182 (D. Nev. 1980); *Galahad v. Weinshienk*, 555 F. Supp. 1201, 1204 (D. Colo. 1983). Moreover, in this case, the Kentucky Constitution charges the Kentucky Supreme Court with the duty to "govern admission to the bar and the discipline of members of the bar." Ky. Const. of 1891, § 116 (1976).

The court's exercise of its inherent power to choose its officers is substantially determinative of the character and quality of our entire judicial system, state and federal. Our system of justice depends, in substantial measure, upon the service of competent and qualified attorneys. The decision whether to admit or deny an applicant admission to the bar, and thus to determine the composition and quality of the bar, affects both the quality of justice in our courts and the public's perception of that quality. The decision is therefore integral to the very essence of the judicial process.

The inherently judicial nature of the governance of the bar admission process is not diminished by the fact that an overburdened state supreme court delegates the administration of part of its responsibility to authorized persons. The Kentucky Supreme Court retains the ultimate authority to determine who will be admitted to practice law in the State of

Kentucky and who will not. Indeed, as his *pro se* brief indicates, Sparks was aware that the Kentucky Supreme Court had delegated its responsibilities in these matters to the Committee of Character and Fitness and the Board of Bar Examiners, and he does not question the validity of that delegation. Therefore, his expectations have clearly been satisfied. *Sparkman*, 435 U.S. at 362.

We hold that the act of considering an application for admission to the bar, particularly when that duty is imposed upon the judiciary by constitution, is a judicial act. When it is performed by a judge, he or she is entitled to absolute judicial immunity. Therefore, the district court was correct in dismissing the plaintiff's complaint against the Chief Justice of the Kentucky Supreme Court.

III

The question that next arises is whether the remaining defendants, who are not judges, nevertheless enjoy immunity for their activities in this matter. The "nonjudicial" defendants are the Kentucky Committee of Character and Fitness, its members, two employees hired by the Committee, and one member of the Board of Bar Examiners. Absolute judicial immunity "attaches to public officials who perform quasi-judicial duties." *Campbell v. Patterson*, 724 F.2d 41, 43 (6th Cir. 1983), *cert. denied*, 465 U.S. 1107 (1984). It is "a general principle of the highest importance to the proper administration of justice that a judicial officer . . . be free to act upon his own convictions, without apprehension of personal consequences to himself." *Sparkman*, 435 U.S. at 355. Public policy requires "absolute immunity . . . for all persons—governmental or otherwise—who [are] integral parts of the judicial process." *Briscoe v. Lahue*, 460 U.S. 325, 335 (1983). In *Campbell*, we held that Michigan's Attorney General, obligated by statute to perform duties of a quasi-judicial nature, enjoys absolute immunity even when the action taken is erroneous.

A survey of the case law reveals that public policy requires absolute immunity for public officials performing quasi-judicial functions in a number of circumstances. It has been granted to members of an attorney disciplinary committee, *Simons*, 643 F.2d at 780; to a state bar association conducting disciplinary proceedings, *Clark v. State of Washington*, 366 F.2d 678 (9th Cir. 1966); to lawyers serving on a mediation panel, *Mills v. Killebrew*, 765 F.2d 69 (6th Cir. 1985); to the court's clerk for acts within the scope of his quasi-judicial duties, *Denman v. Leedy*, 479 F.2d 1097 (6th Cir. 1973); to "friends of the court," *Johnson v. Granholm*, 662 F.2d 449 (6th Cir. 1981), *cert. denied*, 457 U.S. 1120 (1982); and to prosecutors engaging in prosecutorial activity, *Imbler v. Pachtman*, 424 U.S. 409 (1976).

In the present case, the district court determined that the Committee and Board of Bar Examiners were performing quasi-judicial functions. In reaching this decision, the court relied on *Hoover v. Ronwin*, 466 U.S. 558 (1984). In *Hoover*, the plaintiffs, who had failed the Arizona Bar Examination, brought suit against the members of the Arizona Supreme Court Committee on Examinations and Admissions, alleging that the committee members had conspired to restrain trade in violation of the Sherman Act by artificially reducing the number of competing attorneys in Arizona. The Supreme Court determined that the actions of the committee members, in using a grading formula to determine admissions to the bar, could not be divorced from the actions of the Arizona Supreme Court. The Court noted that the members were appointed by the supreme court and the court "retained strict supervisory powers and ultimate full authority over its actions." *Id.* at 572. The Court concluded that the conduct challenged was "in reality that of the Arizona Supreme Court," and therefore, the committee members were absolutely immune from anti-trust liability under the doctrine of sovereign immunity announced in *Parker v. Brown*, 317 U.S. 341 (1943). *Hoover*, 466 U.S. at 573.

Similarly, in the *Simons* case, two attorneys sued the members of the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law. They alleged that the defendants maliciously harrassed them during an illegal investigation of their law practice. The court concluded that the committee members' work was "functionally comparable to the work of judges. . . . they serve as an arm of the court and perform a function which traditionally belongs to the judiciary." 643 F.2d at 781. The court held that the members of the committee were entitled to absolute judicial immunity.

In this case, there can be no doubt that the functions of the Committee and Board of Bar Examiners are, at least, quasi-judicial. *Accord Childs v. Reynoldson,* 623 F. Supp. 135 (D.C. Iowa 1985). The acts complained of in this case were performed by the defendants in obedience to duties imposed upon them by the Kentucky Supreme Court which is charged under the Kentucky Constitution with the obligation to enact rules "govern[ing] admission to the bar and discipline of members of the bar." In response to this constitutional command, the Kentucky Supreme Court adopted Supreme Court Rule 2.000 creating the Board of Bar Examiners and describing its duties, and Rule 2.040 creating the Committee on Character and Fitness, determining its composition, and defining its duties. These rules require, in sum, that the respective committees, their members and staff personnel, act on behalf of the Kentucky Supreme Court in administering procedures for admission to the bar of Kentucky and in determining the character and fitness of applicants as a condition precedent to admission. In executing these duties, the committee members and staff personnel act under the direct supervision of the Kentucky Supreme Court and in its name. Their activities cannot be separated from the actions of the Supreme Court of Kentucky. The actions of the defendants in this case are, therefore, not only "functionally comparable" to judicial duties, they are the functional equivalent.

The act of considering an application to the bar is a judicial act. And it is no less a judicial act simply because it is per-

formed by nonjudicial officers in whom the responsibility for the performance of such duties is lawfully delegated by the judiciary. Therefore, those who perform this duty on behalf of the judiciary are entitled to the same judicial immunity as would be enjoyed by judicial officers performing the same act.

The decision of the district court is AFFIRMED.

APPENDIX A

FILED

MAY 11 1987

JOHN P. HEHMAN, C...

United States Court of Appeals

FOR THE SIXTH CIRCUIT

No. 85-5629

GERALD M. SPARKS,

Plaintiff-Appellant,

v.

THE CHARACTER AND FITNESS COMMITTEE OF KENTUCKY, et al.,

Defendants-Appellees.

Before: ENGEL, KRUPANSKY and RYAN, Circuit Judges.

J U D G M E N T

ON APPEAL from the United States District Court for the Western District of Kentucky.

THIS CAUSE came on to be heard on the record from the said district court and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the judgment of the said district court in this case be and the same is hereby affirmed.

Each party is to bear its own costs on appeal.

ENTERED BY ORDER OF THE COURT

John P. Hehman, Clerk

John P. Hehman
Clerk

Issued as Mandate: 6/24/87

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APPENDIX B

No. 85-5629

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

JUN 16 1987

JOHN P. HEHMAN, Clerk

GERALD M. SPARKS,

Plaintiff-Appellant,

v.

THE CHARACTER AND FITNESS COMMITTEE OF KENTUCKY, ET AL.,

Defendants-Appellees

ORDER

BEFORE: ENGEL, KRUPANSKY and RYAN, Circuit Judges

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

John P. Hehman, Clerk

SUPREME COURT OF THE UNITED STATES

NO. 87-275

Gerald M. Sparks,

Petitioner

V

CHARACTER & FITNESS COMMITTEE OF KENTUCKY, et al

ON WRIT OF CERTIORARI to the United States Court of Appeals for the Sixth Circuit

THIS CAUSE having been submitted on the petition for writ of Certiorari and response thereto.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this court that the judgment of the above court in this cause is vacated with costs, and that this cause is remanded to the United States Court of Appeals for the Sixth Circuit for further consideration in light of FORRESTER V WHITE 484 US____ (1988).

IT IS FURTHER ORDERED that the petitioner, Gerald M. Sparks, recover from Character & Fitness Committee of Kentucky, et al., Two Hundred Dollars ($200.00) for his costs herein expended

RECOMMENDED FOR FULL TEXT PUBLICATION
See, Sixth Circuit Rule 24

No. 85-5629

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

GERALD M. SPARKS,
Plaintiff-Appellant,

v.

CHARACTER AND FITNESS COMMITTEE OF KENTUCKY, et al.,
Defendants-Appellees.

ON APPEAL from the United States District Court for the Western District of Kentucky.

Decided and Filed October 18, 1988

Before: ENGEL, Chief Judge;* KRUPANSKY and RYAN, Circuit Judges.

RYAN, Circuit Judge. This case has been returned to us by the United States Supreme Court which vacated our earlier judgment and directed that we give the matter "further consideration" in light of *Forrester v. White*, 484 U.S. _; 98 L. Ed. 2d 757 (1988). We have done so and now hold that the Supreme Court's opinion in *Forrester* is entirely distinguishable from this case and, therefore, does not require that

*The Honorable Albert J. Engel assumed the duties of Chief Judge effective April 1, 1988.

we change our previous decision. *See Sparks v. Character & Fitness Comm.*, 818 F.2d 541 (6th Cir. 1987). Accordingly, we once again affirm the district court's dismissal of plaintiff's complaint.

I.

Plaintiff Sparks filed a complaint in the district court on March 1, 1985 against the chief justice of the Kentucky Supreme Court, a member of the Board of Law Examiners, the Kentucky Character and Fitness Committee, its members, and two of its employees. The complaint alleged violations of various constitutional rights pursuant to 42 U.S.C. § 1983, and asserted several state law claims arising out of the Kentucky Supreme Court's refusal to admit Sparks to membership in the bar of the state of Kentucky.

In our earlier decision, we described the factual background for Sparks' lawsuit as follows:

> Sparks averred that in 1980, when he was first a candidate for admission to the Kentucky bar, he was interviewed, pursuant to Kentucky Supreme Court Rule 2.040, by Junius J. Beaver, Jr., an associate member of the [Kentucky Character and Fitness] Committee. At the conclusion of the interview, Mr. Beaver addressed a letter to the Kentucky State Board of Bar Examiners stating that because Sparks was not possessed of the requisite character and moral fitness, he could not recommend that Sparks take the upcoming Kentucky Bar Examination.
>
> Sparks contends that despite Mr. Beaver's adverse recommendation, of which Sparks had no knowledge, "the powers that be still allowed him to take the Kentucky Bar exam four times . . . knowing full well that the plaintiff had been blackballed." Sparks failed the bar examination three times; his fourth examination was never graded.

818 F.2d at 542.

The district court dismissed the action against the Honorable Robert F. Stephens, Chief Justice of the Kentucky Supreme Court, on the ground that Chief Justice Stephens was entitled to absolute immunity because consideration of an application for admission to the bar is a judicial act for which a judge cannot be held liable in damages. The district court also dismissed the action against the remaining defendants, holding that given the extensive authority exercised over the Board of Bar Examiners and the Character and Fitness Committee by the Kentucky Supreme Court, the actions of the Board of Bar Examiners and the Committee relating to Sparks' application for admission to the bar "cannot be divorced from the actions of the Supreme Court of Kentucky" and are also "clothed with judicial immunity." The district court therefore dismissed plaintiff's complaint.

On appeal, we affirmed the district court's holding. 818 F.2d 541 (6th Cir. 1987). After noting, *inter alia*, that the Kentucky Constitution charges the Kentucky Supreme Court with the duty to "govern admission to the bar and the discipline of members of the bar," Ky. Const. of 1891, § 116 (1976), we held that "the act of considering an application for admission to the bar, particularly when that duty is imposed upon the judiciary by constitution, is a judicial act. When it is performed by a judge, he or she is entitled to absolute judicial immunity." 818 F.2d at 543. Our reasoning, in part, was as follows:

> In [*Stump v.*] *Sparkman* [435 U.S. 333, 342 (1978)], the Supreme Court stated:
>
> > "The relevant cases demonstrate that the factors determining whether an act by a judge is a 'judicial' one relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties,

> i.e., whether they dealt with the judge in his judicial capacity."
>
> . . . .
>
> The power to determine who should practice before the courts has been aptly summarized by Chief Justice Taney:
>
> > "And it has been well settled, by the rules and practice of common-law courts, that it rests exclusively with the court to determine who is qualified to become one of its officers, as an attorney and counsellor, and for what cause he ought to be removed."
>
> *Ex parte Secombe*, 60 U.S. (19 How.) 9, 13 (1856). This power is not only exclusive; it is inherently judicial. *Simons v. Bellinger*, 643 F.2d 774, 780 (D.C. Cir. 1980). *Accord Louis v. Supreme Court of Nevada*, 490 F. Supp. 1174, 1182 (D. Nev. 1980); *Galahad v. Weinshienk*, 555 F. Supp. 1201, 1204 (D. Colo. 1983).
>
> . . . .
>
> The court's exercise of its inherent power to choose its officers is substantially determinative of the character and quality of our entire judicial system, state and federal. Our system of justice depends, in substantial measure, upon the service of competent and qualified attorneys. The decision whether to admit or deny an applicant admission to the bar, and thus to determine the composition and quality of the bar, affects both the quality of justice in our courts and the public's perception of that quality. The decision is therefore integral to the very essence of the judicial process.

818 F.2d at 542-43. We therefore affirmed the district court's dismissal of the plaintiff's complaint against the chief justice of the Kentucky Supreme Court. *Id.* at 543.

We then addressed the question whether the remaining defendants, who are not judges, nevertheless enjoy immunity for their activities with regard to plaintiff's application for admission to the Kentucky bar. We explained in some detail that since the "nonjudicial" defendants were acting pursuant to a command imposed upon them by the Kentucky Supreme Court under a provision of the Kentucky Constitution, their actions, at the very least, were quasi-judicial and, that being so, they were entitled to absolute immunity as well. We stated, in part:

> Public policy requires "absolute immunity . . . for all persons—governmental or otherwise—who [are] integral parts of the judicial process." *Briscoe v. LaHue*, 460 U.S. 325, 335 (1983)). In *Campbell* [*v. Patterson*, 724 F.2d 41, 43 (6th Cir. 1983)], we held that Michigan's Attorney General, obligated by statute to perform duties of a quasi-judicial nature, enjoys absolute immunity even when the action taken is erroneous.
>
> A survey of the case law reveals that public policy requires absolute immunity for public officials performing quasi-judicial functions in a number of circumstances. It has been granted to members of an attorney disciplinary committee, *Simons*, 643 F.2d at 780; to a state bar association conducting disciplinary proceedings, *Clark v. State of Washington*, 366 F.2d 678 (9th Cir. 1966); to lawyers serving on a mediation panel, *Mills v. Killebrew*, 765 F.2d 69 (6th Cir. 1985); to the court's clerk for acts within the scope of his quasi-judicial duties, *Denman v. Leedy*, 479 F.2d 1097 (6th Cir. 1973); to "friends of the court," *Johnson v. Granholm*, 662 F.2d 449 (6th Cir. 1981), *cert. denied*, 457 U.S. 1120 (1982); and to prosecutors engaging in prosecutorial activity, *Imbler v. Pachtman*, 424 U.S. 409 (1976).

. . . .

In *Hoover* [*v. Ronwin*, 466 U.S. 558 (1984)], the plaintiffs, who had failed the Arizona Bar Examination, brought suit against the members of the Arizona Supreme Court Committee on Examinations and Admissions, alleging that the committee members had conspired to restrain trade in violation of the Sherman Act by artificially reducing the number of competing attorneys in Arizona. The Supreme Court determined that the actions of the committee members, in using a grading formula to determine admissions to the bar, could not be divorced from the actions of the Arizona Supreme Court. The Court noted that the members were appointed by the supreme court and the court "retained strict supervisory powers and ultimate full authority over its actions." 466 *Id.* at 572. The Court concluded that the conduct challenged was "in reality that of the Arizona Supreme Court," and therefore, the committee members were absolutely immune from anti-trust liability under the doctrine of sovereign immunity announced in *Parker v. Brown*, 317 U.S. 341 (1943). *Hoover*, 466 U.S. at 573.

Similarly, in the *Simons* case, two attorneys sued the members of the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law. They alleged that the defendants maliciously harassed them during an illegal investigation of their law practice. The court concluded that the committee members' work was "functionally comparable to the work of judges . . . they serve as an arm of the court and perform a function which traditionally belongs to the judiciary." 643 F.2d at 781.

. . . .

> The acts complained of in this case were performed by the defendants in obedience to duties imposed upon them by the Kentucky Supreme Court which is charged under the Kentucky Constitution with the obligation to enact rules "govern[ing] admission to the bar and discipline of members of the bar." In response to this constitutional command, the Kentucky Supreme Court adopted Supreme Court Rule 2.000 creating the Board of Bar Examiners and describing its duties, and Rule 2.040 creating the Committee on Character and Fitness, determining its composition, and defining its duties. These rules require, in sum, that the respective committees, their members and staff personnel, act on behalf of the Kentucky Supreme Court in administering procedures for admission to the bar of Kentucky and in determining the character and fitness of applicants as a condition precedent to the admission. In executing these duties, the committee members and staff personnel act under the direct supervision of the Kentucky Supreme Court and in its name. Their activities cannot be separated from the actions of the Supreme Court of Kentucky. The actions of the defendants in this are, therefore, not only "functionally comparable" to judicial duties, they are the functional equivalent."

Id. at 543-44. We concluded that:

> The act of considering an application to the bar is a judicial act. And it is no less a judicial act simply because it is performed by nonjudicial officers in whom the responsibility for the performance of such duties is lawfully delegated by the judiciary. Therefore, those who perform those duties on behalf of the judiciary are entitled to the same judicial immunity as would be enjoyed by judicial officers performing the same act.

Id. at 544-45. We determined, in other words, that whether a function is a judicial act is determined by the nature of the function, not the office of the actor.

In obedience to the Supreme Court's order, we now reconsider our decision in light of *Forrester.*

II.

In *Forrester,* plaintiff brought a 42 U.S.C. § 1983 action against a state court judge, alleging that she was demoted and later discharged from her position as a probation officer because of her sex, in violation of the Equal Protection Clause of the fourteenth amendment. Under Illinois law, the defendant judge had authority to hire and fire such officers at his discretion. The Supreme Court held that the judge was not protected from liability by absolute judicial immunity because it was "clear that Judge White was acting in an administrative capacity when he demoted and discharged Forrester." 98 L. Ed. 2d at 566. In reaching this holding, the Court observed:

> When applied to the paradigmatic judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court, the doctrine of absolute judicial immunity has not been particularly controversial. Difficulties have arisen primarily in attempting to draw the line between truly judicial acts, for which immunity is appropriate, and acts that simply happen to have been done by judges. Here, as in other contexts, immunity is justified and defined by the *functions* it protects and serves, not by the person to whom it attaches.
>
> This Court has never undertaken to articulate a precise and general definition of the class of acts entitled to immunity. The decided cases, however, suggest an intelligible distinction between judicial acts and the administrative, legislative, or executive

> functions that judges may on occasion be assigned by law to perform. Thus, for example, the informal and *ex parte* nature of a proceeding has not been thought to imply that an act otherwise within a judge's lawful jurisdiction was deprived of its judicial character. *See Stump v. Sparkman,* 435 U.S. 349, 363 n.12 (1978). Similarly, acting to disbar an attorney as a sanction for contempt of court, by invoking a power "possessed by all courts which have authority to admit attorneys to practice," does not become less judicial by virtue of an allegation of malice or corruption of motive.

Id. at 565 (*quoting Bradley v. Fisher,* 80 U.S. (13 Wall.) 335, 354 (1871)) (emphasis in original).

Thus, the Court in *Forrester* made clear that only "judicial acts" are protected by judicial immunity, and that administrative decisions, although "often crucial to the efficient operation of public institutions," such as the courts, are not protected by absolute immunity. 98 L. Ed. 2d at 566. Judicial immunity has not been granted to judges promulgating a code of conduct for attorneys. *Supreme Court of Virginia v. Consumers Union of United States, Inc.,* 446 U.S. 719 (1980). Similarly, "judges acting to enforce the bar code would be treated like prosecutors, and then would be amenable to suit for injunctive and declaratory relief." *Id.* at 734-37.

In *Forrester,* Justice O'Connor explained that the analytical key "in attempting to draw the line" between functions for which judicial immunity attaches and those for which it does not is the determination whether the questioned activities are "truly judicial acts" or "acts that simply happen to have been done by judges." It is the *nature* of the function involved that determines whether an act is "truly" judicial.

The question then is whether an "administrative" decision to hire or fire a court staff employee, action not essentially "judicial," as in *Forrester,* is the functional equivalent of the

action of the justices of a state supreme court and their designees in considering the qualifications of an applicant for admission to the bar as in this case.

A careful examination of the *Forrester* and *Consumers Union* cases reveals that the nature of the function involved in determining qualifications for admission to the bar on the one hand, and hiring and firing court staff personnel or enforcing a bar code on the other, are essentially different. The former is a judicial act, the latter two are not.

As *Forrester* holds, hiring and firing administrative court staff personnel are functions that merely happen to be performed by some judges. Indeed, they are functions ordinarily performed by nonjudicial employers and, when judges perform them, the actor is different but the nature of the action is not. In many courts, the employment decisions for court staffing purposes are made by nonjudicial court personnel. There is, as the Court held in *Forrester*, nothing functionally or historically "judicial" about hiring or firing staff members. The same cannot be said for the historically judicial function of determining eligibility for, and the composition of, the state bar.

The language of *Forrester* itself, to say nothing of the very different facts involved there, suggests at least three separate reasons why the actions taken in this case by the Kentucky Supreme Court and its Committee on Character and Fitness are "judicial acts." First, in *Forrester*, the Supreme Court cited the availability of an appeal process as a central reason for granting judicial immunity to judges for their judicial acts: "Nor are suits against judges the only available means through which litigants can protect themselves from the consequences of judicial error. Most judicial mistakes or wrongs are open to correction through ordinary mechanisms of review, which are largely free of the harmful side-effect inevitably associated with exposing judges to personal liability." *Forrester*, 98 L. Ed. 2d at 565. Kentucky Supreme Court Rule

2.060 provides applicants to the Kentucky bar with an avenue of appeal on the record from adverse decisions by the Committee on Character and Fitness:

> The decision of the Character and Fitness Committee as to the eligibility of an applicant for admission to the bar of this state shall be final unless, on motion by the applicant filed within sixty days after notice of an adverse decision has been mailed to his last known address, the Supreme Court upon *review of the record* overrules such decision.

(emphasis added).

Supreme Court review on the record of an adverse decision "as to the eligibility of the applicant for admission to the bar," initiated "on motion," describes a process of appellate review of possible "judicial mistakes or wrongs" that has no counterpart in the review of the inherently administrative function of hiring and firing court staff personnel.

Second, the *Forrester* Court quoted, with approval, from the decision in *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335 (1871), according immunity to the judicial disbarment of an attorney. The *Bradley* Court observed that acting to disbar an attorney invokes a power "possessed by all courts which have authority to admit attorneys to practice. . . ." 80 U.S. (13 Wall.) at 354. If the action of a court in disbarring an attorney is a judicial act for which immunity attaches, in part, because it "invokes a power possessed by all courts which have authority to admit attorneys to practice," it follows inexorably that in exercising the power it has to determine who shall be admitted to practice, the Kentucky Supreme Court performs a judicial act for which immunity attaches. And if, as the *Forrester* Court observed, it is the nature of the function performed which determines the judicial character of an act and not "the character of the agent," it is of no moment that the actor is a designee of the justices of the Kentucky Supreme Court rather than the justices themselves. "Here,

as in other contexts, immunity is justified and defined by the *functions* it protects and serves, not by the person to whom it attaches." 98 L. Ed. 2d at 565 (emphasis in original).

Finally, the power to determine eligibility for membership in the bar has historically been reposed exclusively in the courts. *See Ex parte Secombe, supra*; *Simons v. Bellinger, supra.* That is not to say that "because a judge acts within the scope of his authority, such ... decisions are brought within the court's 'jurisdiction' or converted into 'judicial acts'...." *Forrester,* 9 L. Ed. 2d at 567. Some functions performed by courts are so inherently related to the essential functioning of the courts as to be traditionally regarded as judicial acts. Determining the composition of the bar is just such an historic and traditional function. The establishment of criteria for determining the intellectual competence, academic preparedness, and moral fitness of persons who petition the court for the privilege of undertaking the confidential trust of serving the court as one of its professional officers has always been a function confined to the courts themselves. It has been universally thought that the courts are best equipped to understand the requirements for adequate representation of lay persons before the courts and to identify the qualifications of those who would undertake such representation as the courts' officers. That inherent expertise, and the exercise of the power to apply it in admitting and rejecting candidates to the practice of law, functions rooted in tradition and history, are arguably as fundamental to the sound functioning of the judiciary as is the task of resolving the disputes such officers present.

We return, then, to the analytical key provided by Justice O'Connor in *Forrester* for "drawing the line" between functions for which judicial immunity attaches and those for which it does not: whether the function in question is a "truly judicial act[ ]" or an "act[ ] that simply happen[s] to have been done by judges." Whatever argument might be made about the inherently "judicial" character of the function of

determining the membership of the bar, it is manifest that whether analyzed from the perspective of judicial precedent, judicial expertise, history and tradition, or the nature of the act itself, determining the composition of the bar is clearly not a function, like hiring and firing administrative, clerical, and other court personnel that is or ever has been performed by anyone in the private sector or in other branches of government, and "simply happen[s] to have been done by judges."

III.

For the foregoing reasons, and those set forth in *Sparks*, *supra*, we hold that the actions taken by the Kentucky Supreme Court and the Committee on Character and Fitness, and its members, were "judicial acts" to which absolute immunity attached. Having carefully reconsidered our previous decision to that effect in light of the Supreme Court's decision in *Forrester*, we conclude that the district court's dismissal of Sparks' complaint must be **AFFIRMED**.

EXHIBITS

1. CFC letter regarding Appellant
2. Courier Journal article on sponsors /mentors
3. Kentucky Supreme Court Rules
   2.060
   3.160(4)
4. Courier Journal article on FBI

SPECKMAN & BEAVER
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ROBERT J. SPECKMAN
JUNIUS V. BEAVER, JR.

EXHIBIT 1

January 28, 1980

Ms. Rosemary Puckett, Executive Assistant
Kentucky State Board of Bar Examiners
716 Lexington Building
201-215 West Short Street
Lexington, Kentucky 40507

RE: Jerry Marshall Sparks

Dear Ms. Puckett:

I am enclosing herewith the application on the above named individual.

The Character and Fitness Committee may or may not be aware that I personally interview each applicant that I am sent to check.

In interviewing the above applicant the following information was supplied by him as a correction or change on his application.

1. He has been divorced, this took place in Maryland and there is still a piece of real estate to be settled in the divorce action.

2. He has been arrested twice in the State of Maryland. He stated both were probated and were on warrants taken out by his wife while the divorce was in progress. He was arrested once for breaking and entering and once for assault.

3. Mr. Sparks stated he has taken the Maryland Bar Exam six (6) times and has not passed it. He has taken the Pennsylvania Bar Exam two (2) times and did not pass it.

He listed a Larry Stevenson of 1301 Vermont Road, Belair Maryland, as an attorney reference, I attempted to call him but there is no listing for an attorney in Belair by this name.

One of Mr. Sparks character affidavits is signed and then notarized by the same individual.

Jerry Marshall Sparks

In interviewing Mr. Sparks he stated he gave false answers on his application knowingly but did so because he felt the Kentucky Bar would not let him take its exam if he gave truthful answers.

Based on the above problems I can not recommend Mr. Sparks for the taking of the February 1980 Kentucky State Bar Exam.

If you have any questions, please advise.

Very truly yours,

Julius V. Beaver, Jr., Attorney

JVB:mms
Encls

EXHIBIT 2

(6) From time to time, the Character and Fitness Committee shall recommend to the Supreme Court admission to the bar without examination of applicants for such admission who qualify therefor under the provisions of Rule 2.110.

[Amended effective January 1, 1978.]

Rule 2.060 Committee's Decision as to Eligibility

The decision of the Character and Fitness Committee as to the eligibility of an applicant for admission to the Bar of this State shall be final unless, on motion by the applicant filed within 60 days after notice of an adverse decision has been mailed to his last known address, the Supreme Court upon review of the record overrules such decision.

[Amended effective January 1, 1978.]

Rule 2.070 Legal Education

(1) Before an applicant shall qualify for the bar examination he must have been graduated, with an LL.B. or equivalent professional degree, from a law school approved by the American Bar Association or by the Association of American Law Schools.

(2) At least fifteen days prior to the first day of his bar examination, the applicant shall file with the Clerk of the Supreme Court a certificate of his law school graduation. The certification shall be forwarded immediately by the Clerk of the Supreme Court to the Chairman of the Character and Fitness Committee or his designee.

(3) Notwithstanding the provisions of paragraph (1) of this section any person who is enrolled and in good standing in any such approved law school and who in the regular course of study will complete degree requirements within two months from the time such examination is given and has filed with the Board of Bar Examiners a statement of his intention to complete degree requirements at such school, may take the examination provided for under this article, but shall not be admitted to practice law in this state based on the results of the examination unless he completes the requirements for graduation as set out in paragraph (1) of this section within two months from the time of the examination. The grades of an applicant who takes an examination under this paragraph shall not be authenticated or released unless he completes the requirements for graduation within two months of the time of the examination. If an applicant takes an examination under the provisions of this paragraph and does not complete the requirements for graduation within two months of the time of the examination, the taking of such examination shall be deemed a failure within the meaning of Rule 2.090(3), regardless of what grade the applicant may have made on the examination.

[Amended effective January 1, 1978; November 1, 1981.]

COURT RULES

SUPREME COURT OF KENTUCKY

IN RE: ORDER AMENDING RULES OF THE SUPREME COURT (SCR)

86-1

January 13, 1986

The following amendments to SCR 2.111(6) and SCR 3.160(4) shall :ome effective upon the entry of this order. The following new rule, R 3.830, Kentucky IOLTA Fund, shall become effective on July 1, 36.

RULES OF THE SUPREME COURT (SCR)

1. SCR 2.111(6)

Paragraph (6) of SCR 2.111 shall read:

"(6) The limited certificate of admission to practice law in this mmonwealth shall expire if such attorney is granted a certificate of mission to practice; or is admitted to the Bar of this Commonwealth der any other Rule of this Court, or if such attorney ceases to be an ıployee for the employer or its parent, subsidiary, or affiliated enti- s, listed on such attorney's application, whichever shall first occur; *vided, however,* that if such attorney, within thirty days of ceasing to an employee for the employer or its parent, subsidiary, or affiliated tities listed on such attorney's application, becomes employed by other employer for which such attorney shall solely perform legal rvices, such attorney may maintain his admission under this Rule by omptly filing with the Clerk of the Supreme Court a statement to ch effect, stating the date on which his prior employment ceased and s new employment commenced, identifying his new employer and affirming that he shall not provide legal services, in this Common- ealth, to any other individual or entity. In the event that the ıployment of an attorney admitted under this rule shall cease with no bsequent employment by a successor employer within thirty days, ch attorney shall promptly file with the Clerk of the Supreme Court a ıtement to such effect, stating the date that such employment ased."

2. SCR 3.160(4)

Paragraph (4) of SCR 3.160 shall read:

"Neither the Kentucky Bar Association nor its officers, agent delegates or members shall be liable to any member of the bar nor t any other person charged or investigated by said association, its o ficers, agents or delegates, for any damages incident to such investig tion or any complaint, charge, prosecution, proceeding or trial."

3. SCR 3.830

A new rule, SCR 3.830, shall read:

"Rule 3.830 Kentucky IOLTA Fund

The Kentucky Bar Foundation, Inc., a non-profit corporation, sha maintain a special fund for the purpose of depositing interest fro members trust accounts and the name of the fund shall be the Ke tucky IOLTA Fund.

(1) Administration of the Fund. For the purpose of administe ing the funds deposited in the Kentucky IOLTA Fund, the Kentuck Bar Foundation is hereby authorized to create a separate Board Trustees to administer this Fund, which shall consist of nine (members of the Association. The Chief Justice of the Supreme Court Kentucky, or a member of the Supreme Court designated by him, sha be a member of the Board of Trustees of the IOLTA Fund. Th President of the Kentucky Bar Association shall serve as a member the Board, and the remaining members shall be seven (7) attorneys, o of whom shall be from each Supreme Court District of the Commo wealth.

(A) Members of the Board of Trustees from the Supreme Cou Districts shall be appointed by the Board of Governors of the Kentuc Bar Association and approved by the Supreme Court. Of the seven (members first appointed, three (3) shall be appointed for one (1) yea two (2) for two (2) years; and two (2) for three (3) years. Appointmen shall be made for a three-year term. Members may be reappointed, b no members shall serve more than two (2) successive three-year term Each member shall serve until a successor is appointed and qualifie Vacancies occurring through death, disability, inability or disqualific tion to serve, or by resignation, shall be filled for the remainder of t vacant term in the same manner as the initial appointments are ma by the Court. The members of the Board of Trustees of the Kentuc IOLTA Fund shall serve without compensation, but shall be paid the reasonable and necessary expenses incurred in the performance of the duties. Until such time as the Fund shall have adequate reserv funding for the Board of Trustees and any necessary staff shall provided by the Association. The staff support for the Board of Tru ees shall come from the Association and the staff shall be paid f

EXHIBIT 3

State bar association suggests 'mentors' for law students

By ANDREW WOLFSON
Courier-Journal Staff Writer

In the golden days of yore, attorneys-to-be would "read" the law in office apprenticeships, never setting foot inside a law school.

But today, some law students never set foot inside a law office until they land a job — or start their own practice — after graduation.

The result, all too often, according to veteran attorneys and judges, is legal bungling that damages clients' cases and sometimes leads to disbarment of young lawyers.

To give law students a better taste of the lawyer's life — and the ethical challenges he faces — Kentucky Bar Association leaders have proposed a novel program to hook up law students and attorneys.

Under the proposal, all law students in the state would have to sign up with a "mentor," a practicing attorney or judge with whom the student would meet as often as once a month during three years of law school.

The mentor would report on the student's "character" to a bar committee that ultimately determines if the candidate is fit to practice law.

To its proponents, the mentor program would give law students an advisor to lean on and a chance to get legal problems "in the flesh."

It would also instill students with the notion that law is a "profession, not a plumber's trade," says Charles Landrum, former state bar association president.

But critics say they fear that young law students will never develop "meaningful relationships" with attorneys charged with judging their character.

"A mentor must be like a psychologist or a priest — a confidential friend, not an evaluator," said Lee Huddleston, a young Bowling Green attorney and law school instructor.

The mentor program is part of a sweeping set of proposals before the Kentucky Supreme Court that would reshape the way new attorneys are admitted to practice in the state.

The proposals drew both praise and fire at a public hearing yesterday at the Galt House in Louisville. The hearing was held in conjunction with the annual meeting of the state bar association.

The Supreme Court is expected to decide on the proposals within the next month.

Joe Savage, a Lexington trial lawyer who helped draw up the mentor program, likened mentors to "big brothers" who would advise and counsel law students. Students could not be required to do legal work for their mentors.

Savage contends that regular evaluations by a mentor would be markedly superior to the perfunctory five-minute interview with a "character and fitness" committee that bar candidates now undergo — a session many lawyers regard as meaningless.

However, some critics yesterday suggested that even monthly meetings with law students wouldn't be enough for a mentor to accurately judge a student's character and fitness to practice law.

Lexington attorney Norrie Wahe said he had recommended for practice one person he knew on a daily basis. Now he thinks the attorney should be disbarred.

Other attorneys suggested that a compulsory "internship" with lawyers would accomplish far more than the mentor program. However, Savage said the bar association has already rejected that idea as unworkable.

Under the mentor proposal, all first-year law students intending to practice in Kentucky would be required to sign up for a mentor.

Those who failed to obtain mentors could still apply to be admitted to the bar, but their character and fitness would be subject to intensive investigation and scrutiny.

One retired judge said yesterday that those who fail to sign up for mentors should be "double-checked and double-checked and double-checked."

Under the most far-reaching change discussed yesterday, a new seven-lawyer "Kentucky Admissions Commission" would oversee the process of admitting attorneys to practice in Kentucky.

Admission would still hinge on passing the bar exam — and approval by the fitness committee.

But both bar examiners and members of the character and fitness committee — who are now appointed by the Supreme Court — would be appointed by the Admissions Commission.

Savage said the idea is to "centralize" authority.

Ultimate decisions on admissions to the bar would remain with the Kentucky Supreme Court, which would appoint the Admissions Commission.

According to Savage, the commission would not work to limit the number of attorneys in Kentucky.

But Stuart Lampe, a Louisville attorney and one of three state bar examiners, said that is exactly the impression the public will get.

"The public already thinks we're a closed agency," Lampe said. "This will make the public even more unhappy."

Lampe also predicted that the change would open the commission to antitrust suits from students who fail to win admission to the bar.

"The very body that governs the bar will be deciding who becomes a member of it," Lampe said.

Under one thorny proposal, law students who fail the Kentucky bar exam three times would be barred from taking it again.

Kentucky had such a rule, but it was voted out by the state Supreme Court in 1978 after a federal court ruled it was unconstitutional. [illegible] the federal ruling was overturned. Lampe said [illegible] years and the rule was [illegible] who repeatedly fail the exam are likely to make bad lawyers and hurt the bar's public standing.

But several young attorneys said the measure would strike hardest against minority law students, many of whom have had trouble passing the exam in Kentucky.

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EXHIBIT 4

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FBI, bar group traded information, papers say

© New York Times News Service

NEW YORK — The Federal Bureau of Investigation and a lawyers' organization secretly exchanged information about bar applicants for four decades, according to newly disclosed FBI documents.

Beginning in 1935 and continuing through 1976, the documents show, the FBI furnished the National Conference of Bar Examiners with details of the organizational ties and political beliefs of people applying to practice law.

The arrangements, which the bureau insisted be kept "strictly confidential," are described in an article to appear tomorrow in The National Law Journal.

The FBI documents were furnished by the government to the National Lawyers Guild, which has filed a civil suit in Federal District Court in New York charging the federal government with harassment.

The bar examiners' group, a private organization based in Chicago that helps state and local bar associations investigate the character and fitness of bar applicants, ended the relationship with the FBI in 1976.

According to the documents, the FBI initially sought authorization from the Justice Department before supplying the bar group with any information. In 1954, however, Herbert Brownell, then the attorney general, gave blanket permission for the FBI to supply the information.

The bureau told the bar group about such activities by applicants as criticizing decisions of the U.S. Supreme Court, lending support to labor unions or civil-rights causes, or participating in functions sponsored by the National Lawyers Guild.

According to the confidential memorandums, the files of the National Conference of Bar Examiners were also available to the bureau for many years.

No. 88-846 (2)

Supreme Court, U.S.
FILED
JAN 4 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

GERALD M. SPARKS - - - - Petitioner

versus

CHARACTER AND FITNESS COMMITTEE OF KENTUCKY,
JUNIUS J. BEAVER, JR.,
THOMAS P. BELL,
GRANT M. HELMAN,
WILLIAM J. BAIRD, III,
STUART E. LAMPE,
PAT GILL - - - - - - Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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53 pp

QUESTION PRESENTED FOR REVIEW

1. Should this Court grant a writ of certiorari to review the granting of immunity to the Kentucky Supreme Court's Committee on Character and Fitness (hereinafter "the Committee"), one member of the Kentucky Supreme Court's Board of Bar Examiners (hereinafter "the Board"), and four members and an employee[1] of the Committee from the claims of Gerald Sparks (hereinafter "Sparks") for monetary damages under 42 U.S.C. § 1983?

---

[1]The Chief Justice of the Kentucky Supreme Court was originally a defendant and an appellee, but was dismissed on Sparks' motion. Also, Rosemary Puckett was originally a named defendant and a named appellee, but has been dropped as a party in this Court. All other parties below are named in the caption of this brief and are hereinafter called "Respondents."

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No. 88-846

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

GERALD M. SPARKS - - - - *Petitioner*

v.

CHARACTER AND FITNESS COMMITTEE OF KENTUCKY,
JUNIUS J. BEAVER, JR.,
THOMAS P. BELL,
GRANT M. HELMAN,
WILLIAM J. BAIRD, III,
STUART E. LAMPE,
PAT GILL - - - - - - *Respondents*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CITATIONS TO OPINIONS AND JUDGMENTS DELIVERED IN COURTS BELOW

1. *Sparks* v. *Character and Fitness Committee of Kentucky,* 859 F. 2d 428 (6th Cir. 1988) (Opinion reconsidering prior decision in light of *Forrester* v. *White,* 484 U.S. —, 98 L. Ed. 2d 555 (1988) and affirming the district court judgment) (Appendix hereto, 1a-13a).

2. *Sparks* v. *Character and Fitness Committee of Kentucky,* No. 85-5629 (6th Cir. July 16, 1987) (Order denying Sparks' petition for a rehearing en banc). (Petitioner's Appendix B).

3. *Sparks* v. *Character and Fitness Committee of Kentucky,* 818 F. 2d 541 (6th Cir. 1987) (Opinion affirming the district court judgment). (Petitioner's Appendix A).

4. *Sparks* v. *Character and Fitness Committee of Kentucky,* No. 85-209 (W.D. Ky. June 25, 1985) (Order and Memorandum Opinion). (Appendix hereto, 13a-17a).

GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED

After reconsidering its prior decision in light of *Forrester* v. *White,* 484 U.S. —, 98 L. Ed. 2d 555 (1988), as directed by this Court in *Sparks* v. *Character and Fitness Committee of Kentucky,* 108 S. Ct. 744 (1988), the United States Court of Appeals for the Sixth Circuit (hereinafter "Sixth Circuit") again affirmed the district court judgment on October 18, 1988. Sparks had ninety days from the Sixth Circuit's Opinion to file his petition for writ of certiorari (hereinafter "Petition"). 28 U.S.C. § 2101(c). Sparks' Petition was docketed on November 10, 1988. This Court has jurisdiction to entertain the Petition under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND COURT RULES

Statute:

42 U.S.C. § 1983

United States Supreme Court Rules:

17.1, 17.1(a), 17.1(c)

(All are quoted in the Appendix hereto.)

STATEMENT OF THE CASE

Sparks filed a complaint in the United States District Court for the Western District of Kentucky (hereinafter "the district court") seeking monetary damages under 42 U.S.C. § 1983 from the Chief Justice of the Kentucky Supreme Court, a member of the Board (Stuart E. Lampe), the Committee, three members of the Committee (Thomas P. Bell, Grant M. Helman, and William J. Baird, III), an associate member of the Committee (Junius J. Beaver, Jr.), and two employees of the Committee (Pat Gill and Rosemary Puckett). Sparks claimed that the Respondents violated his constitutional procedural and substantive due process rights, equal protection rights, and Eighth Amendments rights.[2] The only remedy sought for those alleged violations was compensatory damages of $120,000.00, punitive damages of $500,000.00, attorney's fees, and court costs.

---

[2]Because the district court dismissed Sparks' action on Respondents' motion to dismiss for failure to state a claim, the averments in the complaint are referred to as "facts" for purposes of this proceeding — even though Respondents take strong issue with many of those averments.

Sparks averred that he was interviewed by Junius J. Beaver, Jr. before he first took the bar examination. After that interview, Mr. Beaver sent a letter to the Board stating that Sparks was not qualified to take the bar examination because he did not have the requisite moral character. Sparks further averred that he then took the Kentucky bar exam four times. He failed three times, and the fourth time, his examination was not graded. Finally, Sparks averred that he was never given a due process hearing concerning his moral fitness to practice law.

The district court dismissed Sparks' complaint, holding that Respondents were entitled to quasi-judicial immunity because, under the Kentucky Constitution and applicable case law, they are integral parts of the judicial process. The Sixth Circuit affirmed. This Court granted certiorari, vacated the judgment and remanded the case to the Sixth Circuit for further consideration in light of *Forrester* v. *White,* 484 U.S. —, 108 S. Ct. 538 (1988). The Sixth Circuit reconsidered its decision in light of *Forrester* and wrote another opinion affirming the district court's dismissal of Sparks' complaint.

SUMMARY OF ARGUMENT

Sparks' Petition for Certiorari should be denied because there are no "special and important reasons" for granting it. The Sixth Circuit has carefully reconsidered its decision with specific reference to the holding of *Forrester* v. *White,* 484 U.S. —, 98 L. Ed. 2d

555 (1988), and once again affirmed the decision of the district court granting the Respondents quasi-judicial immunity. In considering the application of Sparks for admission to the bar, the Respondents performed judicial acts, as designees of the Kentucky Supreme Court. Thus, the Respondents are properly entitled to quasi-judicial immunity, and Sparks' Petition should be denied.

ARGUMENT

There are No Special Reasons for Granting Sparks' Petition to Review the Grant of Quasi-Judicial Immunity to the Respondents.

United States Supreme Court Rule (hereinafter "USSCR") 17.1 provides that review on writ of certiorari "will be granted only when there are special and important reasons therefor." Sparks has given no such special and important reason to justify the granting of the Petition.

First, the Sixth Circuit's decision does not conflict with any of this Court's precedents. See, USSCR 17.1(c). Previously, this Court vacated the Sixth Circuit's original judgment and remanded the case to the Sixth Circuit for reconsideration in light of *Forrester* v. *White,* 484 U.S. —, 98 L. Ed. 2d 555 (1988). In a thorough opinion, *Sparks* v. *Character and Fitness Committee,* 859 F. 2d 428 (1988), the Sixth Circuit reconsidered its decision in light of *Forrester,* clearly distinguished the facts of *Forrester* from the facts of the present case, and, applying the law of *Forrester* to the present case, again affirmed the grant

of quasi-judicial immunity to the Respondents. Respondents adopt *in toto* the Sixth Circuit opinion.[3] As this Court ruled in *Forrester,* 98 L. Ed. 2d at 565, employment functions are not entitled to judicial immunity. But, unlike the hiring and firing of support personnel, the process of determining the admission—or denial—of persons to the practice of law (the basis for the complaint against the Respondents) is clearly a judicial function. The Respondents' performance of a judicial function is entitled to immunity. *Forrester* not only is consistent with the Sixth Circuit's opinion, it *supports* that opinion, as shown by the Sixth Circuit's analysis.

Second, on the issue presented, there is no conflict among the federal courts of appeal. See USSCR 17.1(a). The federal courts of appeal have consistently applied the principles of quasi-judicial immunity which have been adopted by this Court. The federal courts of appeal have ruled that bar examiners, committees on unauthorized practice of law, and bar associations *are* entitled to quasi-judicial immunity for their acts in regulating the practice of law. *Childs* v. *Reynoldson,* 777 F. 2d 1305 (8th Cir. 1985) (members of the board of bar examiners); *Simons* v. *Bellinger,* 643 F. 2d 774 (D.C. Cir. 1980) (in determining what constitutes the unauthorized practice of law, members of the committee on the unauthorized practice of law

[3]For the convenience of the Court, a copy of the Sixth Circuit opinion is included as Appendix A. The constitutional provisions, statutes, and rules relied upon by the Sixth Circuit are set forth verbatim in the Appendix.

performed judicial acts for which they had judicial immunity); *Clark* v. *State of Washington*, 366 F. 2d 678, 681 (9th Cir. 1966) (state bar association had immunity for disbarring an attorney).

Third, neither the Sixth Circuit nor the trial court departed from the usual course of judicial proceedings. See USSCR 17.1(a). Sparks has not claimed any such departure and, indeed, there is none.

Fourth, there are not important federal questions that have not yet been decided by this Court. See USSCR 17.1(c). Contrary to Sparks' general assertion (Petition at 4), he raises no important, undecided federal questions in his petition. He simply argues that judicial immunity does not apply to those who do not "hear cases, render written opinions, conduct trials, set bail, set bonds, or impose sentencing." Petition at 12. Unfortunately for him, however, this Court in *Briscoe* v. *Lahue*, 460 U.S. 325 (1983) and *Imbler* v. *Pachtman*, 424 U.S. 409 (1976), has already decided that judicial immunity extends beyond judges. As this Court emphasized in *Forrester* v. *White*, 484 U.S. —, 98 L. Ed. 2d 555, the performance of judicial functions is entitled to judicial immunity. The Respondents, as designees of the Kentucky Supreme Court, were performing judicial functions in determining the composition of the bar and are entitled to absolute immunity.

CONCLUSION

The Petition fails to state a single special or important reason for the Court to hear this case. In addition, the Sixth Circuit's decision is consistent with and supported by *Forrester* v. *White,* 484 U.S. —, 98 L. Ed. 2d 555 (1988), and other case law in this Court and other federal appellate courts. Respondents, therefore, respectfully request that this Court deny Sparks' petition.

Respectfully submitted,

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APPENDIX

No. 85-5629

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

GERALD M. SPARKS, - - - *Plaintiff-Appellant,*

v.

CHARACTER AND FITNESS COMMITTEE OF KENTUCKY, et al., - - *Defendants-Appellees.*

On Appeal from the United States District Court for the Western District of Kentucky.

Decided and Filed October 18, 1988

Before: ENGEL, Chief Judge;* KRUPANSKY and RYAN, Circuit Judges.

RYAN, Circuit Judge. This case has been returned to us by the United States Supreme Court which vacated our earlier judgment and directed that we give the matter "further consideration" in light of *Forrester* v. *White,* 484 U.S. __; 98 L. Ed. 2d 757 (1988). We have done so and now hold that the Supreme Court's opinion in *Forrester* is entirely distinguishable from this case and, therefore, does not require that we change our previous decision. *See Sparks* v. *Character & Fitness Comm.,* 818 F. 2d 541 (6th Cir. 1987). Accordingly, we once again affirm the district court's dismissal of plaintiff's complaint.

---

*The Honorable Albert J. Engel assumed the duties of Chief Judge effective April 1, 1988.

I.

Plaintiff Sparks filed a complaint in the district court on March 1, 1985 against the chief justice of the Kentucky Supreme Court, a member of the Board of Law Examiners, the Kentucky Character and Fitness Committee, its members, and two of its employees. The complaint alleged violations of various constitutional rights pursuant to 42 U.S.C. § 1983, and asserted several state law claims arising out of the Kentucky Supreme Court's refusal to admit Sparks to membership in the bar of the state of Kentucky.

In our earlier decision, we described the factual background for Sparks' lawsuit as follows:

> Sparks averred that in 1980, when he was first a candidate for admission to the Kentucky bar, he was interviewed, pursuant to Kentucky Supreme Court Rule 2.040, by Junius J. Beaver, Jr., an associate member of the [Kentucky Character and Fitness] Committee. At the conclusion of the interview, Mr. Beaver addressed a letter to the Kentucky State Board of Bar Examiners stating that because Sparks was not possessed of the requisite character and moral fitness, he could not recommend that Sparks take the upcoming Kentucky Bar Examination.
>
> Sparks contends that despite Mr. Beaver's adverse recommendation, of which Sparks had no knowledge, "the powers that be still allowed him to take the Kentucky Bar exam four times . . . knowing full well that the plaintiff had been blackballed." Sparks failed the bar examination three times; his fourth examination was never graded.

818 F. 2d at 542.

The district court dismissed the action against the Honorable Robert F. Stephens, Chief Justice of the Kentucky

Supreme Court, on the ground that Chief Justice Stephens was entitled to absolute immunity because consideration of an application for admission to the bar is a judicial act for which a judge cannot be held liable in damages. The district court also dismissed the action against the remaining defendants, holding that given the extensive authority exercised over the Board of Bar Examiners and the Character and Fitness Committee by the Kentucky Supreme Court, the actions of the Board of Bar Examiners and the Committee relating to Sparks' application for admission to the bar "cannot be divorced from the actions of the Supreme Court of Kentucky" and are also "clothed with judicial immunity." The district court therefore dismissed plaintiff's complaint.

On appeal, we affirmed the district court's holding. 818 F. 2d 541 (6th Cir. 1987). After noting, *inter alia,* that the Kentucky Constitution charges the Kentucky Supreme Court with the duty to "govern admission to the bar and the discipline of members of the bar," Ky. Const. of 1891, § 116 (1976), we held that "the act of considering an application for admission to the bar, particularly when that duty is imposed upon the judiciary by constitution, is a judicial act. When it is performed by a judge, he or she is entitled to absolute judicial immunity." 818 F. 2d at 543. Our reasoning, in part, was as follows:

> In [*Stump* v.] *Sparkman* [435 U.S. 333, 342 (1978)], the Supreme Court stated:
>
> > "The relevant cases demonstrate that the factors determining whether an act by a judge is a 'judicial' one relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they deal with the judge in his judicial

capacity."

. . . .

The power to determine who should practice before the courts has been aptly summarized by Chief Justice Taney:

> "And it has been well settled, by the rules and practice of common-law courts, that it rests exclusively with the court to determine who is qualified to become one of its officers, as an attorney and counsellor, and for what cause he ought to be removed."

Ex parte Secombe, 60 U.S. (19 How.) 9, 13 (1856). This power is not only exclusive; it is inherently judicial. *Simons* v. *Bellinger,* 643 F. 2d 774, 780 (D.C. Cir. 1980). *Accord Louis* v. *Supreme Court of Nevada,* 490 F. Supp. 1174, 1182 (D.Nev. 1980); *Galahad* v. *Weinshienk,* 555 F. Supp. 1201, 1204 (D. Colo. 1983).

. . . .

> The court's exercise of its inherent power to choose its officers is substantially determinative of the character and quality of our entire judicial system, state and federal. Our system of justice depends, in substantial measure, upon the service of competent and qualified attorneys. The decision whether to admit or deny an applicant admission to the bar, and thus to determine the composition and quality of the bar, affects both the quality of justice in our courts and the public's perception of that quality. The decision is therefore integral to the very essence of the judicial process.

818 F. 2d at 542-43. We therefore affirmed the district court's dismissal of the plaintiff's complaint against the chief justice of the Kentucky Supreme Court, *Id.* at 543.

We then addressed the question whether the remaining defendants, who are not judges, nevertheless enjoy immunity for their activities with regard to plaintiff's application for admission to the Kentucky bar. We explained in some detail that since the "nonjudicial" defendants were acting pursuant to a command imposed upon them by the Kentucky Supreme Court under a provision of the Kentucky Constitution, their actions, at the very least, were quasi-judicial and, that being so, they were entitled to absolute immunity as well. We stated, in part:

> Public policy requires "absolute immunity . . . for all persons — governmental or otherwise — who [are] integral parts of the judicial process." *Briscoe* v. *LaHue*, 460 U.S. 325, 335 (1983). In *Campbell* [v. *Patterson*, 724 F. 2d 41, 43 (6th Cir. 1983)], we held that Michigan's Attorney General, obligated by statute to perform duties of a quasi-judicial nature, enjoys absolute immunity even when the action taken is erroneous.
>
> A survey of the case law reveals that public policy requires absolute immunity for public officials performing quasi-judicial functions in a number of circumstances. It has been granted to members of an attorney disciplinary committee, *Simons*, 643 F. 2d at 780; to a state bar association conducting disciplinary proceedings, *Clark* v. *State of Washington*, 366 F. 2d 678 (9th Cir. 1966); to lawyers serving on a mediation panel, *Mills* v. *Killebrew*, 765 F. 2d 69 (6th Cir. 1985); to the court's clerk for acts within the scope of his quasi-judicial duties, *Denman* v. *Leedy*, 479 F. 2d 1097 (6th Cir. 1973); to "friends of the court," *Johnson* v. *Granholm*, 662 F. 2d 449 (6th Cir. 1981), *cert. denied*, 457 U.S. 1120 (1982); and to prosecutors engaging in

prosecutorial activity, *Imbler* v. *Pachtman*, 424 U.S. 409 (1976).

. . . .

In *Hoover* [v. *Ronwin*, 466 U.S. 558 (1984)], the plaintiffs, who had failed the Arizona Bar Examination, brought suit against the members of the Arizona Supreme Court Committee on Examinations and Admissions, alleging that the committee members had conspired to restrain trade in violation of the Sherman Act by artificially reducing the number of competing attorneys in Arizona. The Supreme Court determined that the actions of the committee members, in using a grading formula to determine admissions to the bar, could not be divorced from the actions of the Arizona Supreme Court. The Court noted that the members were appointed by the supreme court and the court "retained strict supervisory powers and ultimate full authority over its actions." 466 *Id.* at 572. The Court concluded that the conduct challenged was "in reality that of the Arizona Supreme Court," and therefore, the committee members were absolutely immune from anti-trust liability under the doctrine of sovereign immunity announced in *Parker* v. *Brown*, 317 U.S. 341 (1943). *Hoover*, 466 U.S. at 573.

Similarly, in the *Simons* case, two attorneys sued the members of the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law. They alleged that the defendants maliciously harassed them during an illegal investigation of their law practice. The court concluded that the committee members' work was "functionally comparable to the work of judges . . . they serve as an arm of the court and perform a function which traditionally belongs to the judiciary." 643 F. 2d at 781.

> The acts complained of in this case were performed by the defendants in obedience to duties imposed upon them by the Kentucky Supreme Court which is charged under the Kentucky Constitution with the obligation to enact rules "govern[ing] admission to the bar and discipline of members of the bar." In response to this constitutional command, the Kentucky Supreme Court adopted Supreme Court Rule 2.000 creating the Board of Bar Examiners and describing its duties, and Rule 2.040 creating the Committee on Character and Fitness, determining its composition, and defining its duties. These rules require, in sum, that the respective committees, their members and staff personnel, act on behalf of the Kentucky Supreme Court in administering procedures for admission to the bar of Kentucky and in determining the character and fitness of applicants as a condition precedent to the admission. In executing these duties, the committee members and staff personnel act under the direct supervision of the Kentucky Supreme Court and in its name. Their activities cannot be separated from the actions of the Supreme Court of Kentucky. The actions of the defendants in this are, therefore, not only "functionally comparable" to judicial duties, they are the functional equivalent."

Id. at 543-44. We concluded that:

> The act of considering an application to the bar is a judicial act. And it is no less a judicial act simply because it is performed by nonjudicial officers in whom the responsibility for the performance of such duties is lawfully delegated by the judiciary. Therefore, those who perform those duties on behalf of the judiciary are entitled to the same immunity as would be enjoyed by judicial officers performing the same act.

Id. at 544-45. We determined, in other words, that whether a function is a judicial act is determined by the nature of the function, not the office of the actor.

In obedience to the Supreme Court's order, we now reconsider our decision in light of *Forrester*.

II.

In *Forrester*, plaintiff brought a 42 U.S.C. § 1983 action against a state court judge, alleging that she was demoted and later discharged from her position as a probation officer because of her sex, in violation of the Equal Protection Clause of the fourteenth amendment. Under Illinois law, the defendant judge had authority to hire and fire such officers at his discretion. The Supreme Court held that the judge was not protected from liability by absolute judicial immunity because it was "clear that Judge White was acting in an administrative capacity when he demoted and discharged Forrester." 98 L. Ed. 2d at 566. In reaching this holding, the Court observed:

> When applied to the paradigmatic judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court, the doctrine of absolute judicial immunity has not been particularly controversial. Difficulties have arisen primarily in attempting to draw the line between truly judicial acts, for which immunity is appropriate, and acts that simply happen to have been done by judges. Here, as in other contexts, immunity is justified and defined by the *functions* it protects and serves, not by the person to whom it attaches.
>
> This Court has never undertaken to articulate a precise and general definition of the class of acts entitled to immunity. The decided cases, however, sug-

> gest an intelligible distinction between judicial acts and the administrative, legislative, or executive functions that judges may on occasion be assigned by law to perform. Thus, for example, the informal and *ex parte* nature of a proceeding has not been thought to imply that an act otherwise within a judge's lawful jurisdiction was deprived of its judicial character. *See Stump* v. *Sparkman,* 435 U.S. 349, 363 n. 12 (1978). Similarly, acting to disbar an attorney as a sanction for contempt of court, by invoking a power "possessed by all courts which have authority to admit attorneys to practice," does not become less judicial by virtue of an allegation of malice or corruption of motive.

Id. at 565 (*quoting Bradley* v. *Fisher,* 80 U.S. (13 Wall.) 335, 354 (1871)) (emphasis in original).

Thus, the Court in *Forrester* made clear that only "judicial acts" are protected by judicial immunity, and that administrative decisions, although "often crucial to the efficient operation of public institutions," such as the courts, are not protected by absolute immunity. 98 L. Ed. 2d at 566. Judicial immunity has not been granted to judges promulgating a code of conduct for attorneys. *Supreme Court of Virginia* v. *Consumers Union of United States, Inc.,* 446 U.S. 719 (1980). Similarly, "judges acting to enforce the bar code would be treated like prosecutors, and then would be amenable to suit for injunctive and declaratory relief." *Id.* at 734-37.

In *Forrester,* Justice O'Connor explained that the analytical key "in attempting to draw the line" between functions for which judicial immunity attaches and those for which it does not is the determination whether the questioned activities are "truly judicial acts" or "acts that simply happen to have been done by judges." It is the

nature of the function involved that determines whether an act is "truly" judicial.

The question then is whether an "administrative" decision to hire or fire a court staff employee, action not essentially "judicial," as in *Forrester*, is the functional equivalent of the action of the justices of a state supreme court and their designees in considering the qualifications of an applicant for admission to the bar as in this case.

A careful examination of the *Forrester* and *Consumers Union* cases reveals that the nature of the function involved in determining qualifications for admission to the bar on the one hand, and hiring and firing court staff personnel or enforcing a bar code on the other, are essentially different. The former is a judicial act, the latter two are not.

As *Forrester* holds, hiring and firing administrative court staff personnel are functions that merely happen to be performed by some judges. Indeed, they are functions ordinarily performed by nonjudicial employers and, when judges perform them, the actor is different but the nature of the action is not. In many courts, the employment decisions for court staffing purposes are made by nonjudicial court personnel. There is, as the Court held in *Forrester*, nothing functionally or historically "judicial" about hiring or firing staff members. The same cannot be said for the historically judicial function of determining eligibility for, and the composition of, the state bar.

The language of *Forrester* itself, to say nothing of the very different facts involved there, suggests at least three separate reasons why the actions taken in this case by the Kentucky Supreme Court and its Committee on Character and Fitness are "judicial acts." First, in *Forrester*, the Supreme Court cited the availability of an appeal process as a central reason for granting judicial immunity to judges for their judicial acts: "Nor are suits against judges the

only available means through which litigants can protect themselves from the consequences of judicial error. Most judicial mistakes or wrongs are open to correction through ordinary mechanisms of review, which are largely free of the harmful side-effect inevitably associated with exposing judges to personal liability." *Forrester,* 98 L. Ed. 2d at 565. Kentucky Supreme Court Rule 2.060 provides applicants to the Kentucky bar with an avenue of appeal on the record from adverse decisions by the Committee on Character and Fitness:

> The decision of the Character and Fitness Committee as to the eligibility of an applicant for admission to the bar of this state shall be final unless, on motion by the applicant filed within sixty days after notice of an adverse decision has been mailed to his last known address, the Supreme Court upon *review of the record* overrules such decision.

(emphasis added).

Supreme Court review on the record of an adverse decision "as to the eligibility of the applicant for admission to the bar," initiated "on motion," describes a process of appellate review of possible "judicial mistakes or wrongs" that has no counterpart in the review of the inherently administrative function of hiring and firing court staff personnel.

Second, the *Forrester* Court quoted, with approval, from the decision in *Bradley* v. *Fisher,* 80 U.S. (13 Wall.) 335 (1871), according immunity to the judicial disbarment of an attorney. The *Bradley* Court observed that acting to disbar an attorney invokes a power "possessed by all courts which have authority to admit attorneys to practice. . . ." 80 U.S. (13 Wall.) at 354. If the action of a court in disbarring an attorney is a judicial act for which immunity

attaches, in part, because it "invokes a power possessed by all courts which have authority to admit attorneys to practice," it follows inexorably that in exercising the power it has to determine who shall be admitted to practice, the Kentucky Supreme Court performs a judicial act for which immunity attaches. And if, as the *Forrester* Court observed, it is the nature of the function performed which determines the judicial character of an act and not "the character of the agent," it is of no moment that the actor is a designee of the justices of the Kentucky Supreme Court rather than the justices themselves. "Here, as in other contexts, immunity is justified and defined by the *functions* it protects and serves, not by the person to whom it attaches." 98 L. Ed. 2d at 565 (emphasis in original).

Finally, the power to determine eligibility for membership in the bar has historically been reposed exclusively in the courts. *See Ex parte Secombe, supra; Simons* v. *Bellinger, supra.* That is not to say that "because a judge acts within the scope of his authority, such . . . decisions are brought within the court's 'jurisdiction' or converted into 'judicial acts'. . . ." *Forrester,* 9 L. Ed. 2d at 567. Some functions performed by courts are so inherently related to the essential functioning of the courts as to be traditionally regarded as judicial acts. Determining the composition of the bar is just such an historic and traditional function. The establishment of criteria for determining the intellectual competence, academic preparedness, and moral fitness of persons who petition the court for the privilege of undertaking the confidential trust of serving the court as one of its professional officers has always been a function confined to the courts themselves. It has been universally thought that the courts are best equipped to understand the requirements for adequate representation of lay persons before the courts and to identify the qualifications of those who would undertake such representation

as the courts' officers. That inherent expertise, and the exercise of the power to apply it in admitting and rejecting candidates to the practice of law, functions rooted in tradition and history, are arguably as fundamental to the sound functioning of the judiciary as is the task of resolving the disputes such officers present.

We return, then, to the analytical key provided by Justice O'Connor in *Forrester* for "drawing the line" between functions for which judicial immunity attaches and those for which it does not: whether the function in question is a "truly judicial act[]" or an "act[] that simply happen[s] to have been done by judges." Whatever argument might be made about the inherently "judicial" character of the function of determining the membership of the bar, it is manifest that whether analyzed from the perspective of judicial precedent, judicial expertise, history and tradition, or the nature of the act itself, determining the composition of the bar is clearly not a function, like hiring and firing administrative, clerical, and other court personnel that is or ever has been performed by anyone in the private sector or in other branches of government, and "simply happen[s] to have been done by judges."

III.

For the foregoing reasons, and those set forth in *Sparks, supra*, we hold that the actions taken by the Kentucky Supreme Court and the Committee on Character and Fitness, and its members, were "judicial acts" to which absolute immunity attached. Having carefully reconsidered our previous decision to that effect in light of the Supreme Court's decision in *Forrester*, we conclude that the district court's dismissal of Sparks' complaint must be AFFIRMED.

No. 87-275. Gerald M. Sparks, Petitioner v. Character and Fitness Committee of Kentucky, et al.

January 19, 1988. On petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit. The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Sixth Circuit for further consideration in light of Forrester v. White, 484 U.S. — 98 L. Ed. 2d 555, 108 S. Ct. — (1988).

Same case below, 818 F. 2d 541.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Civil Action No. 85-209

GERALD M. SPARKS, - - - - - *Plaintiff,*

v.

KENTUCKY CHARACTER AND FITNESS COMMITTEE, Et Al., - - - - *Defendant.*

MEMORANDUM OPINION—Entered June 25, 1985

This matter is before the court on the motion to dismiss of defendants Kentucky Character and Fitness Committee, Junius J. Beaver, Jr., Thomas P. Bell, Grant M. Helman, William J. Baird III, Stuart E. Lampe, and Pat Gill. They claim that the court lacks jurisdiction over the action because all of the defendants are protected by judicial immunity, that the complaint fails to state a claim upon which relief can be granted, and that plaintiff's complaint is in violation of Rule 8(a) of the Federal Rules of Civil Procedure and therefore, should be dismissed.

Plaintiff Gerald M. Sparks brings this suit *pro se* and *in forma pauperas* (sic) under 42 U.S.C. § 1983. He alleges tht defendants, members and employees of the Kentucky Character and Fitness Committee and the Kentucky Board of Bar Examiners, prevented him from passing the Kentucky Bar examination in violation of his 8th, 5th, and 14th amendment constitutional rights. Specifically, Sparks contends that in 1980 Beaver placed a letter in his bar application file stating that he did not recommend Sparks to be admitted to the bar. Despite that letter, the Board per-

mitted Sparks to take the bar examination four times. He failed three of those examinations. The fourth was never graded. Thus, Sparks argues, the Committee unconstitutionally defrauded him by taking his application and examination fees knowing that it would never recommend him to the bar.

Without ruling on the other two contentions of the defendants, the court finds that the defendants are immune from suit. Thus, it shall grant their motion to dismiss. On April 17, 1985, this court entered an order dismissing plaintiff's claims against Chief Justice Robert F. Stephens. The court found that Stephens was protected by the doctrine of judicial immunity because consideration of an application for admission to the bar is judicial in nature and judges are absolutely immune from liability for damages for their judicial acts. *See Louis* v. *Supreme Court of Nevada*, 490 F. Supp. 1174, 1181 (D. Nev. 1980); *Gallahad* v. *Weinshienk*, 555 F. Supp. 1201 (D. Colo. 1983). It follows from that decision that the same acts performed by an arm of the Kentucky Supreme Court retain their judicial nature as well as their immunity.

In the recent Supreme Court decision *Hoover* v. *Ronwin*, ___ U.S. ___, 104 S. Ct. 1989 (1984), the Court held that actions of the Arizona Supreme Court's Committee on Examinations and Admissions and Board of Bar Examiners relating to the grading of the bar examination could not be divorced from the Arizona Supreme Court's exercise of its power. Although that decision dealt with the Committee's liability under the Sherman Act, the Court's discussion of the relationship between the Committee and Board, and the state Supreme Court is equally applicable here.

The Kentucky Supreme Court has extensive authority over the Board of Bar Examiners and the Character and Fitness Committee. Their members are appointed by the

Supreme Court and the Court must approve the rules and regulations promulgated by those members. *Supreme Court Rules* 2.000 & 2.040. In addition, the court directs which subjects are to be tested and the minimum score needed to pass the examination. *Supreme Court Rule* 2.090. Finally, the court retains the final authority to determine who will be admitted to practice law in the State. *Supreme Court Rule* 2.060. Just as in the *Hoover* case, the actions of the Committee and Board which concern consideration of an application for admission to the bar cannot be divorced from the actions of the Supreme Court of Kentucky. Hence, those actions are clothed with judicial immunity.

Sparks' allegations concern improper consideration of his application for admission to the bar. For the reasons heretofore set forth those alleged acts are judicial in nature and the defendants are therefore, immune from suit. Accordingly, this court does not have jurisdiction to hear Spark's claim, and his complaint shall be dismissed.

An order of dismissal is this day entered.

DATED: June 24, 1985

(s) Edw. Johnstone
Edward H. Johnstone, Judge
United States Court

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

KENTUCKY CONSTITUTION § 116

The Supreme Court shall have the power to prescribe rules governing its appellate jurisdiction, rules for the appointment of commissioners and other court personnel, and rules of practice and procedure for the Court of Justice. The Supreme Court shall, by rule, govern admission to the bar and the discipline of members of the bar.

RELEVANT SECTIONS OF UNITED STATES SUPREME COURT RULES

Rule 17. Considerations Governing Review of Certiorari

.1 A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

* * * * * * *

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

RELEVANT SECTIONS OF THE KENTUCKY SUPREME COURT RULES

Rule 2. Admission of Persons to Practice Law

Rule 2.000 Board of Bar Examiners

(1) There is hereby created a Board of Examiners known and designated as Kentucky Board of Bar Examiners, hereinafter referred to as "Board." The Board shall be composed of three attorneys appointed by the Supreme Court of Kentucky for terms of three years, the members to serve until the expiration of their terms and until their successors are appointed. The Board shall select from its membership a chairman and a secretary.

(2) Subject to the approval of the Supreme Court, the Board shall have the power to adopt and amend rules and regulations governing the manner in which it carries out its duties.

(3) The Board is charged with the responsibility of administering the bar examination to qualified applicants for admission to the bar of the Commonwealth.

Rule 2.040 Character and Fitness Committee Nominations

(1) There is hereby created a Committee on Character and Fitness, to be composed of three attorneys, appointed by the Supreme Court for terms of three years, the members to serve until the expiration of their terms and until their successors are appointed. The Character and Fitness Committee shall select from its membership a chairman.

(2) Subject to the approval of the Supreme Court, the committee shall have the power to adopt and amend rules and regulations governing the manner in which it carries out its duties. The Character and Fitness Committee may

appoint from the bar of the state associate members of the Character and Fitness Committee.

(3) The Committee on Character and Fitness is charged with the responsibility of determining the age, character and fitness, education and general qualifications of those applicants for admission to the bar of the Commonwealth whose applications are referred to it by the Clerk of the Supreme Court. The Character and Fitness Committee further shall be authorized to render advisory opinions, based on fact situations submitted to it in writing as to whether a person who has the academic qualifications for admission to a law school approved by the American Bar Association or the American Associaton of Law Schools would be eligible for admission to the bar of the Commonwealth from the standpoint of character. The Character and Fitness Committee is further charged with the duty of certifying to the Supreme Court persons who appear qualified to perform legal services as interns under Rule 2.540.

Rule 2.060 Committee's Decision as to Eligibility

The decision of the Character and Fitness Committee as to the eligibility of an applicant for admission to the Bar of this State shall be final unless, on motion by the applicant filed within 60 days after notice of an adverse decision has been mailed to his last known address, the Supreme Court upon review of the record overrules such decision.

FILED
JAN 11 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-846

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

GERALD M. SPARKS - - - - Petitioner

versus

CHARACTER AND FITNESS COMMITTEE
OF KENTUCKY,
JUNIUS J. BEAVER, JR.,
THOMAS P. BELL,
GRANT M. HELMAN,
WILLIAM J. BAIRD, III,
STUART E. LAMPE,
PAT GILL - - - - - - Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITIONER'S REPLY BRIEF

GERALD M. SPARKS
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Louisville, Kentucky 40214
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WESTERFIELD-BONTE CO., 619 W. KENTUCKY—P.O. BOX 3251, LOUISVILLE, KY.

PETITIONER'S REPLY BRIEF

HONORABLE JUSTICES OF THE UNITED STATES SUPREME COURT. I'm going to make this reply brief as short as possible and to the point.

On January 19, 1988 docket #87-275 you held in Petitioner Sparks' favor by a 8 - 0 vote. The petition for writ of certiorari was granted. By an 8 - 0 vote the judgment was vacated and the case remanded to the United States Court of Appeals for the 6th Circuit in light of *Forrester* v. *White,* 484 U.S. —, 98 L. Ed. 555, 108 S. Ct. — (1988).

The writ of certiorari should be granted because

1. Petitioner was never afforded a Due Process hearing as required by U.S. Supreme Court case law. See *Willner,* 373 U.S. 96, and the *Louis* case, 490 F. Supp. 1174, and
2. The Character and Fitness Committee composed of only lawyers has no immunity from civil liability.
3. Even the respondents do not believe they have immunity from civil liability, because they wrote a new supreme court rule of Kentucky in their attempt to acquire immunity *after* the Character and Fitness Committee was sued by the Petitioner.

When a Judge does not have any immunity from civil liability when he exercises purely *an administrative* function, see *Forrester* v. *White,* 484 U.S. —, (1988), how can *a mere lawyer* have immunity from civil liability? The petitioner was blackballed after

a five minute interview and *before* the bar applicant took any bar exam, a letter was placed in applicant's file which prevented him from ever being passed on the Kentucky Bar Exam.

When you pay your money for a professional exam, you expect a fair and equal opportunity of being passed. The one man Character and Fitness Committee knew the petitioner *before* the petitioner took any bar exam, was not going to be passed on his bar exam because he had been blackballed. Doesn't this type of extreme and outrageous conduct shock the conscience of this court? Thirty states have now abolished the Character and Fitness interview because it serves no *useful purpose.*

Petitioner would call taking a man's money for a professional exam, knowing you never intended to pass that man a perfect example of theft by deception.

Every man in this country is supposed to have a *fair and equal* opportunity; the very foundation of this country is based upon this basic principle. What legal right does a mere lawyer who interviews prospective bar members for less than 5 minutes, have for blackballing a man simply because he does not like the applicant's *physical appearance?* Certainly the applicant's knowledge, time, and effort in graduating from law school *should far outweigh* what one man thinks of you for 5 minutes. Petitioner worked very hard for his education, and a lot of hard work, time, and effort went into obtaining his JD Law Degree. A man's mind is a horrible commodity to waste! There

is no legal justification for a letter in an applicants folder preventing him from pursuing his chosen profession, namely the practice of law. Petitioner had a B average in law school, and is now being denied his chosen profession simply because a man he had never met before placed a letter in his file which prevented him from ever being passed on the Kentucky Bar Exam!

Make no mistake about it, the petitioner was never supposed to find the letter that Beaver Jr. had placed in his file! Petitioner's hard work of studying, going the bar review courses, and knowing that he was always passing the bar exam, but for some reason was not being passed is what made him suspicious and wanting to see what was in his folder. Written on the outside of his folder were the words "DO NOT PASS" . . . Petitioner asks this respected court how discriminatory is that! ! !

When you take a man's money for a professional exam, you must provide him with *a fair and equal* opportunity of being passed. Petitioner never had a fair and equal opportunity of being passed on the Kentucky Bar Exam! Even if they had immunity in the first place, they certainly *waived* that immunity when they continued to take petitioner's money for a professional exam, knowing they (the CFC) never intended to pass the applicant.

The petitioner has no criminal record; but he can show you numerous convicted felons who are practicing law in Kentucky! ! These men are suspended or

license revoked and then after a period of time they are allowed to reapply and are readmitted to the Bar.

The Petitioner's 5th, 6th, 8th and 14th Amendment rights were violated. The petitioner was not afforded and *Due Process.* U.S. Supreme Court Case Law requires a prospective Bar Member to receive *Due Process. See Willner* case at 373 U.S. 96, and the *Louis* case 490 F. Supp. 1174.

Basic and *fundamental fairness* dictate you do not arbitrarily and capriciously place a letter in an applicants folder, without his knowledge and consent, preventing him from ever being passed on the Kentucky Bar Exam! Make no mistake about it, *the respondents never intended* for the petitioner to find the letter in his folder dated 1980 and *before* the petitioner took any exam, nor did they intend for him to see the words "DO NOT PASS," written on the outside of his folder. The respondents wanted the petitioner to believe he was too dumb or stupid to pass the Kentucky Bar Exam! !

Even The Respondents Don't Believe They Have Any Immunity From Civil Liability! ! The reason is that after they were sued by the Petitioner they wrote a *brand new rule* (Ky. Supreme Court Rule) in their attempt to obtain immunity from civil liability. If they thought (the CFC) they had immunity in the first place, why would they go to all the time, trouble, and expense of writing a new supreme court rule (Ky.) *after they were sued* by the petitioner? The petitioner and others wonder how many other people have they

done this to? Why would they write a new Ky. Supreme Court Rule if Sparks (the petitioner) was the only man they ever did it to?

The *old rule* was 2.060 and the *new rule* is 3.160(4) which the respondents very conveniently forgot to mention in their brief! Copies of the old rule and the new rule are in my original brief.

There can be no legal reason or justification for the Character and Fitness Committee receiving quasi immunity. By their own admission, they don't believe they have any immunity! The respondents wrote a new Supreme Court Rule of Kentucky after they were sued by the Petitioner. The mere fact that applicants have been blackballed for years and years does not make it right nor does it justify this extreme and outrageous conduct! Petitioner is the first man ever in the history of this country to find a letter in his folder that in effect said, "DO NOT PASS." The letter was in his folder *before* he took any exam. Nor is it a valid public policy to continue this discriminatory practice.

Please don't forget what is right is right and what is wrong is wrong, and it is not only wrong it is *inherently wrong* to take a bar applicant's money 4 times for a professional exam, knowing you never intend to pass him because of a letter placed in his folder *before* he takes any bar exam! Merely interviewing prospective bar members is nothing more than an *administrative function* and no immunity from civil liability can attach. When a Judge does not have immunity from

civil liability how can you allow a *mere lawyer immunity* when he exercises purely an *administrative function* when he interviews prospective bar members *before* they take any bar exam.

CONCLUSION

The petition states a very valid reason for the court to hear this case. This case represents a *landmark* case in this country. Petitioner was never afforded any *Due Process* as required by U.S. Case law namely the *Willner* and *Louis* cases which have been previously cited. *Forrester* v. *White*, 484 U.S. —, 98 L. Ed. 555 (1988) supports the petitioner and indicates that if a Judge does not have immunity from civil liability, certainly lawyers who compose a Character and Fitness Committee would not have any immunity! Petitioner, therefore, respectfully requests that this court grant Sparks' petition. If and when granted the petitioner would like the following relief. Waived into the Kentucky Bar, awarded $820,000 in damages, ($150,000 in compensatory damages, and $500,000 in punitive damages), and have the respondents pay petitioner's filing fee and printing costs.

If this case has to be remanded back to the 6th Circuit, petitioner would like for a different 3 Judge panel to hear this case, because the original 3 Judge panel did not follow the mandate or instructions given to them by this respected court, and award the petitioner his damage of $820,000 and waive him into the Bar under Federal rule 11. Perhaps sanctions

should be imposed on Karpansky, Ryan, and Engel for not following the instructions set forth by the U.S. Supreme Court. Keep in mind that the letter was placed in petitioner's folder in 1980 and *before* he took any bar exam.

Respectfully submitted,

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Petitioner